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RAILROAD RETIREMENT

ORIGINAL 5199

HEARINGS

BEFORE THE

SUBCOMMITTEE ON

COMMERCE, TRANSPORTATION, AND TOURISM

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST AND SECOND SESSIONS

ON

USE OF RAILROAD RETIREMENT FUNDS FOR OTHER PURPOSES BY THE
TREASURY DEPARTMENT

NOVEMBER 14, 1985

RAILROAD RETIREMENT AND UNEMPLOYMENT BENEFITS PROTECTION
ACT OF 1986—H.R. 4338

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USE OF RAILROAD RETIREMENT FUNDS FOR OTHER PURPOSES BY THE TREASURY DE- PARTMENT

THURSDAY, NOVEMBER 14, 1985

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRANSPORTATION, AND TOURISM,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2218, Rayburn House Office Building, Hon. James J. Florio (chairman) presiding.

Mr. FLORIO. The subcommittee will come to order.

I would like to welcome all in attendance to this morning's hearing which will be looking into concerns that we have about actions by the Department of Treasury that could jeopardize the future benefits of railroad retirees numbering 1 million, in rough estimate.

Section 15(e) of the Railroad Retirement Act clearly states that it is the Railroad Retirement Board that shall determine when securities held by the railroad retirement fund shall be sold, that they shall be sold only in the amount necessary to pay benefits.

Normally the Department of Treasury withdraws money from the railroad retirement funds only at the direction of the Railroad Retirement Board, and only in such amounts as the Board directs to pay benefits.

At the beginning of this month, however, Treasury did something different. Between the 1st of November and the 8th of November, the Department of Treasury unilaterally sold interest-bearing securities held by the railroad retirement account in an amount of \$445 million in excess of what was required to meet November's benefit payments. This amount is almost twice the normal monthly benefit payments of \$481 million.

Furthermore, this action was taken without consultation with or direction from the Railroad Retirement Board, as provided under statute. Simply put, the Treasury Department illegally used funds held in trust for the Nation's 1 million railroad retirees to finance other Government operations.

Last Friday I wrote to Treasury Secretary Baker, asking for a complete explanation for this illegal action. I also requested the General Accounting Office to investigate the Treasury Department's action.

In addition, the Railroad Retirement Board wrote to Secretary Baker, calling his attention to this illegal venture.

After this hearing was announced, the Department of Treasury stated that it would repay the retirement fund the excess funds withdrawn, and pay interest to make the fund whole, if the debt ceiling bill required them to do so.

I am pleased that the Treasury Department has now admitted that it acted incorrectly, but this does not excuse what must have been, it seems to me, a willing violation of the law. I think we have to take action to ensure that this type of activity does not happen again, so as to protect railroad retirees' funds from any such future raids on their funds held in trust in order to finance other Government operations.

I am hoping that this hearing will shed some light on how the Department of Treasury could have made this rather significant mistake, and to highlight the fact that this is something that should not happen again.

I will recognize the gentleman from Indiana, Mr. Coats.

Mr. COATS. Thank you, Mr. Chairman, for that recognition. Before I make my opening statement, I would like to ask the Chair if he would consent to accept Mr. Lent's statement. Mr. Lent is detained in another hearing.

Mr. FLORIO. Without objection, the statement of Mr. Lent and any other Members will be put into the record at this point, and the record will be held for 3 days to do that.

[Information to be furnished follows:]

STATEMENT OF HON. NORMAN F. LENT

Mr. Chairman, I commend you for calling this hearing on the Treasury Department's use of the railroad retirement funds for purposes other than paying railroad retirement benefits.

This morning's hearing focuses on the Treasury Department's decision, earlier this month, to accelerate the disinvestment of funds from the railroad retirement account. On November 1, 1985, the General Treasury did not have sufficient funds to pay the Federal Government's debts. Therefore, the Treasury Department accelerated disinvestment of several accounts, including the Social Security, the civil service and the railroad retirement accounts. During this disinvestment process, approximately \$445 million was disinvested from the railroad retirement account which was not needed to pay railroad retirement benefits. This was a serious miscalculation. Many railroad retirees are dependent upon that account for their livelihood. This transaction must be examined carefully to answer the following questions:

- (1) What caused the miscalculation.
- (2) How is the miscalculation to be corrected without negatively affecting the railroad retirement account, and
- (3) How do we ensure that such a situation does not occur again?

I would also like to note that this is not the only time the railroad retirement account's funds have been dipped into for purposes other than paying railroad retirement benefits. In 19 of the last 24 years, the railroad retirement account has loaned money to the railroad unemployment insurance account to pay unemployment benefits. Currently the unemployment account owes the retirement account over \$750 million. Action should be taken to put the unemployment account on a sound financial footing. This must be done to ensure that the retirement funds are used for their intended purpose, to pay rail retirees' benefits.

I believe the essential question before us today is how the railroad retirement account is affected by using its funds for purposes other than paying benefits to retirees who depend upon that account for their livelihood. I look forward to an informative hearing this morning which will provide us with the answers to a number of outstanding questions concerning the manner in which the railroad retirement funds are being used.

Thank you, Mr. Chairman.

Mr. COATS. I would like to extend the period of opening the record so that we might be able to submit some questions.

I am ranking member on a select committee at 10 o'clock, and given the way that we are spread out—

Mr. FLORIO. The record will be held open for the submission of questions as well.

Mr. COATS. I thank the Chair for that.

This morning the subcommittee will be reviewing the use of railroad retirement funds for purposes other than paying benefits to railroad retirees. This is an issue which is of great concern to me, and I know to the chairman and other members of this committee.

In 1983 the railroad retirement account was on the brink of insolvency. Congress stepped in and resolved this situation by enacting the Railroad Retirement Solvency Act of 1983. Fortunately, the railroad retirement account is no longer hovering on the brink of insolvency as a result of these actions. The account is currently stable, but this is no guarantee of the account's future solvency.

The Railroad Retirement Board's 16th actuarial evaluation, the Board stated: "The long-term stability of the railroad retirement system is still questionable." The railroad retirement fund should be used to pay railroad retirees' benefits, and for no other purpose.

This month the Treasury Department disinvested the accounts earlier than usual. The early disinvestment was caused by the lack of funds in the general Treasury to pay the Government debts. Not only was the railroad retirement account disinvested early, but more funds were disinvested than were needed to pay railroad retirement benefits.

It is important that the witnesses here today provide us with information explaining why railroad retirement funds were disinvested earlier than normal. What caused the error? How will it be corrected? And how will this situation affect railroad retirement accounts in the future?

I would also like our witnesses here today to address another issue; namely, the use of railroad retirement funds to help finance the railroad unemployment insurance account. The retirement account has loaned the unemployment account substantial sums of money, so that the unemployment account can pay benefits. Currently the unemployment account owes the retirement account over \$750 million, and this debt will only continue to grow and threaten the solvency of the retirement account, as long as contributions to the unemployment account are inadequate to cover the expenses of that account.

Continuing to use retirement funds for the purpose of helping to finance the unemployment account concerns me greatly. We as a subcommittee should act so that the railroad retirement funds need no longer be used for purposes other than paying retirement benefits.

I am pleased to see the members of the Railroad Retirement Board are here today. I am sure they will be able to answer—at least I hope they will be able to answer the following questions.

Question No. 1, in the 16th actuarial evaluation, why did the Board recommend a 1-percent diversion of retirement taxes to the unemployment account to be used to repay the debt owed the retirement account by that unemployment account?

Second, what long-term effects would such a 1-percent diversion have on the railroad retirement account?

And third, what action needs to be taken to ensure the long-term solvency of the retirement account?

Mr. Chairman, I look forward to an informative hearing, and I commend you for calling it, and regret that the congressional schedule is such that I won't be able to stay for the entire hearing, but look forward to hearing from the witnesses this morning. [See p. 22.]

Mr. FLORIO. Thank you very much.

We are pleased now to have as our first witness a representative from the Treasury Department, Hon. Gerald Murphy, Acting Fiscal Assistant Secretary of the U.S. Department of the Treasury.

Mr. Murphy, we welcome you to the committee. We appreciate your participation today, particularly in light of all of the difficulties that everyone is attempting to address. I acknowledge the receipt of a letter from Secretary Baker, and appreciate your participation here, and your statement will be made part of the record in its entirety, and we would ask for the record that you introduce your colleague.

STATEMENT OF GERALD MURPHY, ACTING FISCAL ASSISTANT SECRETARY, DEPARTMENT OF THE TREASURY

Mr. MURPHY. Thank you, Mr. Chairman.

With me this morning is Mr. Bart Derrick, supervisory fiscal specialist in the Office of the Secretary.

Mr. Chairman, members of the subcommittee, I welcome this opportunity to appear before you this morning to clarify the continuing efforts of the Treasury Department and of the Secretary of the Treasury to assure persons due payments from the United States that their payments will be made and honored, notwithstanding the lack of congressional action on a debt limit increase. I must emphasize that we provide such assurances only through today, when Congress must act on the debt limit bill to avoid default.

As the committee is aware, the present debt limit precluded Treasury from following normal investment and disinvestment procedures for several Government accounts. Moreover, our ability to operate the finances of the United States on a routine and predictable basis has been sorely strained. It is the obligation of the Secretary of the Treasury to reconcile his responsibility not to issue debt in excess of the debt limit with his concurrent obligation to manage responsibly the finances of the United States, including in particular the timely payment of benefits for a number of programs for which he serves as fund manager.

In balancing these responsibilities, the Secretary has made decisions based on four guidelines: One, avoid an unprecedented default on obligations of the United States; two, ensure that recipients of benefit payments receive their payments when expected; three, minimize, to the extent possible, the cost of actions taken to the various funds administered by Treasury; and four, stay within the debt limit.

I can report to you today that, in spite of numerous and complex problems, Treasury has, to date, managed to avoid a default, en-

sured that recipients of monthly payments have been paid on time, minimized the cost of actions necessary to make payments on time, and stayed within the debt limit. I must caution, however, that we are running out of time. Passing a debt limit bill today is essential.

I trust today's testimony, and testimony Treasury has given in the last 2 weeks, will clarify what we have done and reassure you and the American public that our actions have not jeopardized the solvency of any trust funds. I must repeat, however, that only immediate passage of a debt limit bill will relieve the unnecessary and unfortunate anxiety that recipients are experiencing.

Treasury carries three accounts for the Railroad Retirement Board: One, the railroad retirement benefits account, which is by far the largest and includes almost all the system's surplus; two, the Social Security equivalent benefits account, which is relatively small and operates largely on a cash-flow basis; and, three, the railroad retirement supplemental account, which is still smaller.

Each month Treasury receives from the Railroad Retirement Board instructions about the investment and disinvestment of the accounts. Where the funds hold market-based securities, with respect to which there is a significant amount of investment management required by the Board, the Board's instructions as to investment amounts and timing are quite specific. Where special par value securities, described in section 15(e) of the Railroad Retirement Act, are involved, the Board usually just informs Treasury of the amount of maturing securities to be reinvested on the first of each month.

The difference between the amount maturing and the amount required to pay benefits is the amount to be reinvested. The actions Treasury took in early November involved these special par value investments in the railroad retirement accounts.

Notwithstanding the severe squeeze on both Treasury's cash-flow and its ability to invest, until November 1, the three railroad retirement accounts were operated, using totally standard procedures. There were no noninvestments, early redemptions or any other actions taken that would adversely affect those funds. During this period, in fact, Treasury continued to make redemptions several days after the issuance of benefit checks—to grant them float—according to standard Treasury operating practices for major retirement funds.

During September and October, Treasury's cash balances were such that, as is normally the case, benefits could be paid without first redeeming trust fund securities. However, on October 31, Treasury's closing cash balance was approximately \$1.8 billion, as compared to a normal cash balance for that day of approximately \$20 billion. On November 1, Treasury estimated that it would have to make approximately \$10 billion in payments, including approximately \$6.9 billion of Social Security benefit payments, approximately \$1.4 billion of Civil Service retirement payments and approximately \$320 million in railroad retirement benefit payments. Revenues for that day were estimated at approximately \$3 billion. A similar situation was projected for November 4.

Given this severe cash constraint, the only way that Treasury could assure that benefit payments would be made and honored at the beginning of November was to advance the normal date on

which trust fund securities were redeemed to pay benefits. In the case of railroad retirement, this advancing of the redemptions to November 1 and 4, with a small redemption on November 8, instead of the usual November 1, 7, and 8 represented modification of the float benefit Treasury had unilaterally been providing to the railroad retirement account.

Modifying the redemption schedule set by Treasury reduced the amount of interest on the float the railroad retirement account otherwise would have gained by approximately \$160,739. Treasury would be able to replace the interest loss if Congress passes a statutory provision similar to section 273 of the Gramm-Rudman amendment as it passed the House on November 1 which would make all funds whole.

The committee is aware that errors were made in processing these unusual transactions on November 1. The committee, I believe, is also aware that these errors were discovered and corrected. Essentially, the errors were that an excess \$321 million was redeemed on November 1, and \$124 million of the redemption on November 4 was not taken into account in a later redemption of the two smaller accounts, according to normal procedures.

Although none of us likes mistakes, in an office where six people are investing over 130 accounts involving over \$300 billion in an abnormal situation with directions mainly given over the telephone, errors can happen. Treasury has procedures, involving cross-confirmations with the program agencies, to identify any errors quickly and to correct them promptly.

When there are debt limit constraints, our ability to make corrections immediately is somewhat more difficult. Nevertheless, the error involving the excess \$321 million redemption on November 1 was corrected as of November 1; the error involving the \$124 million redemption on November 4 was corrected as of November 4. The account will suffer absolutely no loss of interest as a result.

The actions Treasury has taken are actions which enabled railroad retirees to receive their benefits this month. These actions could have been avoided had Congress responded prior to November 1 to Secretary Baker's October 22 letter in which he urged quick passage of a debt limit increase to avoid the need for such actions.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions you might have.

Mr. FLORIO. I thank you very much for your statement.

Let me say at the outset I don't particularly have an interest in going into the macroeconomic policy questions as to how we got to the \$1 trillion debt limit to the \$2 trillion debt limit in 4 years; likewise, who it is that is responsible for not passing the debt limit increase, and superimposing other considerations. This is probably not the forum.

I would like to focus on a narrow question with regard to the authority of the Treasury Department to act without instructions from the Railroad Retirement Board, and your concession that an error was made, and what is the measure for avoiding such errors?

I am particularly interested in your observation that—you almost implied that there was a clerical miscalculation on the amount of money that had to be redeemed. I am assuming from

the information that I have received that on a regular basis, and I assume on a monthly basis, the Treasury Department is informed by the Railroad Retirement Board as to the amounts of money that are required to be disinvested to make payments. That is a fairly easy thing to calculate.

What I am interested in is how you somehow decided or made an error in miscalculating what the Railroad Retirement Board specifically told you was the amount of money needed to disinvest to meet benefits. You do it every month. Why is it that this month something else was done? I will anticipate what the answer is and allow you to supply the answer, because you have in a sense implied that there was the perception that because of the debt limit difficulty we have now and the obligations you had for Social Security, civil service, I get the clear impression there was an intent to almost cross-subsidize to deal with the other problems, which causes us a little bit of concern.

Let me ask you, there isn't any question in your mind, is there, that it is the Railroad Retirement Board that directs the Treasury Department what to disinvest so as to meet benefits and to meet benefits only?

Mr. MURPHY. Yes, Mr. Chairman, the Railroad Retirement Board advises us each month as to what the total amount of benefits will be.

Mr. FLORIO. Did that happen this month?

Mr. MURPHY. Yes.

Mr. FLORIO. How did we get to the point where that did not work the way it usually works?

Mr. MURPHY. The problem, Mr. Chairman, was that we were, because of the debt ceiling and our inability to fully invest all of the trust funds, the lack of cash that we had to pay benefits—

Mr. FLORIO. You have adequate cash to pay benefits for the railroad retirement funds.

Mr. MURPHY. On November 1, as I mentioned in my statement, we were projecting a very small total Government cash balance, and we had a total of \$10 billion in payments that were due on November 1.

Mr. FLORIO. The difficulty is you're talking about the big picture and I'm talking about the narrow picture. The difference, by the way, if I could just add, between this and the Social Security System, as I understand it, is that the Secretary of the Treasury is the trustee for Social Security. Whether you agree or disagree with this disinvestment, there is an arguable question as to whether he has the authority to do that.

There is no question with regard to the railroad retirement. It is not within the discretion of the Secretary of the Treasury to make these decisions. He is an agent of the Railroad Retirement Board. Do you concede that point?

Mr. MURPHY. Yes, sir. And let me just add, to complete my statement, the intent of the Treasury was to disinvest only the exact amount of the benefits. The intent was to disinvest the \$320 million. Apparently what took place is we essentially processed that transaction twice, because the error was \$321 million.

Mr. FLORIO. You are saying it is a computer mishap?

Mr. MURPHY. No. We are saying because of the abnormal situation and our inability to follow standard normal procedures, these things were all being done simultaneously by human beings, and there was a transaction that was processed twice. It was caught through our normal process very quickly and corrected as of the date, so as to result in no loss.

Mr. FLORIO. We have a letter to the Secretary dated November 7, pointing out that Treasury "attempted to take a disinvestment action which was not authorized by the law."

Obviously the Board felt the need to communicate on the 7th of November, and since that time the actions that you have taken are trying to deal with this problem, but again, that is only after the Board notified you, after we announced that we were having this hearing, that these actions have been taken.

I am concerned if you are telling me it is merely a clerical recomputation of someone's faulty mathematics.

Mr. MURPHY. Basically, Mr. Chairman, the error that took place on November 1—we report to railroad each month what it is we have done. On the error made on November 1, they caught it before we did. When they advised us, we took corrective action. I regret that there has been probably some miscommunication between my staff and the railroad retirement as to exactly what was happening and why.

Mr. FLORIO. Let's look at the normal process. Don't they tell you how much to disinvest? They are in charge of the fund. Don't they tell you sell this amount of securities because the payments due this month are x ? Did that happen again this month as normal?

Mr. MURPHY. The amount was furnished to us, and that was the amount we were disinvesting. But because we were doing things on a different date, because of the need to raise enough cash so that the railroad retirement payees could receive their checks and have them honored at the bank, everything was being done on a different time sequence. And in that process, a transaction was in essence doubled up.

Mr. FLORIO. Let me leave that at this point. There really is not—I think it is not a satisfactory response. We are talking about dealing with railroad retirees' concerns. There is really nothing different this month from any other month with regard to the ability to pay railroad retirees' amounts.

What you are doing, it seems to me, is talking about the overall problems that we all may have, and that causes concern. If we are talking about intermixing, commingling our decisions on payments of benefits and talking about the whole big pot—as a matter of fact, that is clearly the impression that came to the people who are interested in this issue. Everything was dealt with in terms of the needs to pay out all of the benefits, and the suggestion—not to be cynical, but the suggestion has been brought to our attention that, but for the publicity, but for the concerns of the Board and the Congress, none of these corrective actions would have been taken.

I heard you say that if the Congress passes legislation that you will pay back the interest which is lost. I would think that that—and I would hope that the Board would share my view in their fiduciary capacity—it is not a discretionary thing. You have depleted the resources of the Board by not only the amounts that were dis-

invested beyond, which you will pay back, but you depleted it by the interest lost. So I am not sure that there is a need for statutory authority to require you to pay back. It seems to me that there is a trustee fiduciary responsibility that you have as an agent, but more significantly, that the Board has, to pay back that interest which the fund may have lost as a result of this action.

Do you share my observation that you have a requirement to pay back the interest that has been lost?

Mr. MURPHY. What we did, first of all, was to disinvest only the amount of the railroad retirement benefits from the railroad retirement accounts, after adjustment for the errors. We did the same thing for Social Security and for civil service. We redeemed only enough to provide for those benefit payments to be honored.

That action, we had no choice. The alternative was to—

Mr. FLORIO. Let's talk about railroad retirement. You do have a choice there.

Mr. MURPHY. Railroad retirement and everybody else. Those checks could not have been honored on November 1.

Mr. FLORIO. The railroad retirement checks could not have been honored?

Mr. MURPHY. That is correct.

Mr. FLORIO. Why?

Mr. MURPHY. The Government only has one consolidated cash account. All of the funds coming in and all of those going out go in and out of that one account. Normally we have enough cash in that account to permit the Railroad Retirement Board to leave their funds invested through the first few days of November and earn interest on the float while those checks are clearing through the banking system, and before they hit the Treasury's account.

On November 1, we did not have the cash in our account to allow them to do that. Therefore, we had to disinvest. We had provided them that float benefit unilaterally as a matter of equity to the fund a number of years ago—1980, it started.

This month, because of the debt crisis, we were not able to extend that benefit to them, and we had to make the redemption on November 1.

Mr. FLORIO. What you are telling us is notwithstanding, the fact that the disinvestment beyond the amount necessary to pay the benefits was clearly without authority in law, that when the disinvestment was made, even if it was for a day, there was a loss to the railroad retirement fund of the interest that was foregone as a result of that disinvestment. You do not feel an obligation to reimburse the fund for lost interest. To make it very simple, that was extracted from the fund, that was not authorized?

Mr. MURPHY. Mr. Chairman, I do not agree. I believe there is some confusion here. We were authorized to disinvest the fund for the amount of the benefits, and we have done that.

Mr. FLORIO. How about the amount beyond the benefits?

Mr. MURPHY. The amount beyond the benefits was an error. It was discovered, it was corrected, and there is absolutely no loss of any interest to the fund because of those errors.

Mr. FLORIO. You are representing that there was no loss of any interest as a result of that error?

Mr. MURPHY. That is correct. And I believe that may have been a point of confusion.

Mr. FLORIO. It was a point of confusion. In your statement, you seemed to say that the only way that you could pay the interest back was if there was some sort of statutory authority.

Mr. MURPHY. That is a separate point. The fact that we were not able in November to extend railroad retirement, the benefit of keeping their funds invested until their checks cleared through the banking system and hit our account, because we had to redeem our November 1 a few days earlier than we would have normally otherwise, they did lose the benefit of that interest earnings, and that is the \$160,000 figure I mentioned earlier.

That is the interest lost that only legislation can provide back to the fund.

Mr. FLORIO. Run that through once more?

Mr. MURPHY. Certainly. The fact that we had to redeem securities a few days early in order to provide the cash to honor checks—

Mr. FLORIO. Redeem the securities beyond the employees' benefits?

Mr. MURPHY. No. Redeem the amount of the employees' benefits a few days early. It means that in November the railroad retirement accounts received less interest than they would have under normal circumstances.

Mr. FLORIO. Why did you have to redeem them a few days earlier?

Mr. MURPHY. We redeemed them a few days earlier because we needed room under the debt ceiling to go out in the market and raise enough cash, so that money would be in the bank when the railroad retirement recipients tried to cash their checks.

The loss, again, of interest as a result of redeeming a few days early in November, it did cost the railroad retirement account \$160,739, and it is that interest loss where legislation is needed to make the fund whole.

Mr. FLORIO. Redeeming a few days early, was that done at the direction of the Railroad Retirement Board?

Mr. MURPHY. No. And it was not necessary. The Railroad Retirement Board tells us the amount of the payments to be made November 1. Those redemptions could be made November 1. We normally allow them to leave those funds invested for a few additional days until the checks clear, as a matter of equity. That has been a procedure that we have had, a benefit that we extended to the major retirement funds in 1980.

Mr. FLORIO. Let me just cut to the bottom line. The fact is, who really is in charge of these types of decisions in terms of amounts, when to disinvest, and it seems to me—and we will hear, obviously, from the Railroad Retirement Board that the Secretary of the Treasury is a ministerial agent in this context, and we have something that happened that is unusual this year where more decision-making authority seemed to be exercised by the Secretary of the Treasury in the amount that was taken, and clearly, as you have admitted, in error, and likewise the decision as to early disinvestment and later disinvestment.

Now the rationale, as I understand it, for you in terms of the redeeming is because of the unique problems in the overall governmental system, and that has caused you to disinvest and redeem at an earlier level, to the detriment of the fund, apparently, that the lost interest will detriment the overall integrity of the fund unless there is legislative authority that comes forward to provide for reimbursement.

I think we have got to get—and we will hear from the Board—a clear understanding as to what the authorities are and a clear understanding that everybody understands what the authorities are, so as to not allow for a recurrence of this type of thing again to the detriment of the railroad retirees' Board, because whoever—whomsoever's error it was, whether it be a clerical error, a judgment error, a policy error, it is going to cost somebody something.

And now we are saying that the Board will be made whole—whether the fund will be made whole—but it is going to be made whole from somewhere, and in this instance, it sounds like what is being advocated is greater overall governmental borrowing to reimburse the fund for the interest that has been lost as a result of the early disinvestment.

I am hopeful that the combination of your testimony and the Railroad Retirement Board's testimony will give us some understanding of where there is a lack of clarity on someone's part, and if need be, we will change the statute to make it even more clear as to who is in charge and how these decisions are going to be made.

Let me yield to the gentleman from Mississippi.

Mr. DOWDY. In your testimony, you say, "Notwithstanding the severe squeeze on both Treasury's cash-flow and its ability to invest until November 1, the three railroad retirement accounts were operated using standard procedures. There were no noninvestments and no early redemptions."

The railroad retirement's testimony says that they followed normal procedures, which they followed at the beginning of each month, they notified Treasury about the amount that was needed to be disinvested, and they knew nothing until conversations held with Treasury officials on November 4, 5, and 6, that you had disinvested about \$445 million more than they had requested you to disinvest; is that true?

Mr. MURPHY. The action taken on November 1 contained an error. We, in essence, processed the same redemption twice. We report what we do to the Railroad Retirement Board, and when they got that report, they discovered the error, and they notified us, and we corrected it as of November 1, so that there would be no loss of earnings to the railroad retirement accounts.

Does that answer your question, Mr. Dowdy?

Mr. DOWDY. Who made the error on November 1, and how was that error made?

Mr. MURPHY. The Treasury made the error during a time when standard procedures could no longer be followed because of the debt limit, and a small office, who was handling many accounts on a manual basis and receiving telephonic instructions on how to handle things under this emergency basis, processed a transaction twice. And it was discovered within a matter of days and corrected.

We do have controls, and we have a procedure of cross-checking with the agencies, which in this case worked. The railroad did advise us when they discovered that error, and there was time to correct it without any loss.

Mr. DOWDY. What office made the error? What office is responsible for this transaction?

Mr. MURPHY. The investment of Government accounts is handled in our Financial Management Service of the Treasury Department.

Mr. FLORIO. Would the gentleman yield?

Mr. DOWDY. I would be happy to yield.

Mr. FLORIO. In accordance with your statement about telephonic instructions being given, it is represented to us—and we will get information from the Board in a few minutes—that they gave the traditional instructions and then confirmed those instructions in a letter dated November 4, in terms of suggesting—this is from Mr. Kenneth Boehne, Associate Executive Director, Fiscal Operations for the Board—in terms of why there should be redemption in order to meet the needs.

This does not comply with what, in fact, you did. They maintain that instructions were given; it was confirmed, but the instructions as to the amount to be redeemed and the dates for redemption were deviated from.

I would be happy to show you the letter. And that in accordance with your understanding of the instructions you received from the Board [handing document to witness]?

Mr. MURPHY. Let me try to clarify a couple of things that perhaps I did not do a very good job of before.

The railroad retirement does provide us with the amount to be redeemed, and that was the amount that we meant to redeem. We did not mean to deviate from that. And when we found an error, we corrected it.

With regard to the timing of investments and disinvestments, with regard to the market-based special securities that the railroad retirement account holds, on those securities, there is a market risk, and the Board advises us specifically of what day to buy, what day to sell.

Mr. FLORIO. Is that what is represented in the letter that you have before you?

Mr. MURPHY. No. This is dealing with the par value securities. On the par value securities, basically the date that we would normally disinvest was something that Treasury calculated, because railroad cannot tell when their checks clear through our account. Treasury is the one that has the knowledge of that, and what we are trying to do, on a normal basis, is to tie the disinvestment with when their checks clear and are paid out of our account.

So that is a unilateral thing which Treasury extended to railroad retirement in order to increase their investment earning capability. We have done that since 1980. But that is not something which is, by law, to be directed by the Railroad Retirement Board. That is something that Treasury took on unilaterally. So we have been providing them with a benefit over the years to keep their funds invested a few days longer after the checks go out.

This month, we were not able to extend that benefit to them because of the debt ceiling crisis.

Mr. FLORIO. I thank the gentleman for yielding.

Mr. DOWDY. But what did that have to do with the mistake? Has a mistake, such as that one that you told us about, ever been made since 1980 in the procedure between Treasury and railroad retirement?

Mr. MURPHY. The errors that were made in November under this abnormal situation, to my knowledge, are the first errors that I have heard about. I am not sure I am answering your full question, however.

Mr. DOWDY. As you have already been asked by the chairman—what was abnormal about this month for the railroad retirement system?

Mr. MURPHY. What was abnormal was that the Federal Government was on the brink of a default for the first time in its history, and if we had followed business as usual and not disinvested the trust funds and gone ahead and issued the checks, they all would have bounced.

Mr. DOWDY. I still do not understand your explanation regarding the reasons that this mistake was made? Even though you had to disinvest a day or a little bit earlier, how do you explain the mistake having been made?

Mr. MURPHY. What we were attempting to do in the crisis situation was to calculate daily the amount of cash we had in the bank, the amount of actual debt we had, subject to the limit, the amounts that we were unable to invest for certain trust funds, and reluctantly, when Congress did not act to increase the debt limit and the Secretary of the Treasury did authorize the early redemption of the major trust funds, so that we could raise enough cash through market financing, so that cash would be in the bank when the benefit payments were presented.

Mr. Chairman, if you don't mind, I would like to mention, the letter that you provided to me from the Railroad Retirement Board does spell out the dates of this investment, and that was per our earlier and our standard operating procedure that we provided to them sometime back. They are well aware of our normal standard practice, and unfortunately this month, we were not able to provide them with that special consideration.

Mr. FLORIO. Special consideration being what? Compliance with their directions?

Mr. MURPHY. No, sir. Compliance—pardon me—the Railroad Retirement Board only knows when their checks go out on the 1st of the month. In the absence of any special arrangement that Treasury had designed for them, the railroad retirement Board could only tell us the benefit payments on the 1st are x amount, and the fund will be disinvested on the 1st day of the month in total.

What we have done is, this month we had to make some of those redemptions on the 1st day of the month.

Mr. FLORIO. You usually do not on the first of the month?

Mr. MURPHY. Under the arrangement, we would normally redeem a portion on the 1st day of the month, a portion on the 7th day of the month, and a portion on the 8th day of the month, which is again to coincide when the payments would be hitting the Treasury's account.

Mr. FLORIO. Therefore, you accelerated the process.

Mr. MURPHY. That's correct. For necessity.

Mr. FLORIO. I am reading the statutory language here: "It shall be the duty of the Secretary of the Treasury to invest such portions of the amounts credited to the railroad retirement account, the dual benefits payments account and the railroad retirees' supplemental account, and the Board is not immediately required for the payment of annuities, supplemental annuities, and death benefits."

I am really wondering about your authority to do what it is you have done, because clearly you did not have direction from the Board. To the contrary, you had direction from the Board to do something different than what you have done.

I really have a question as to whether you have the authority to unilaterally make those types of decisions on disinvestment, because it is in direct opposition to the clear statutory language.

Did you have any apprehensions about this, this initiative on the part of the Treasury, which is at variance not only with traditional practice, but it seems to me at variance with the Secretary's legal responsibilities to maximize investments from the fund for the benefit of the retirees?

Are you comfortable with what it is that has taken place this month?

Mr. MURPHY. Mr. Chairman, as the Secretary mentioned earlier, this was not an action that he wanted to take, because he knew that it would create an interest loss to the trust funds. However, he had no alternative other than to have a U.S. Government default.

With regard to the legality of what we did, I have no doubt in my mind at all that we had full authority to do what we did, which was simply to disinvest the funds a few days earlier than we normally would have under an arrangement that we had set up for the Railroad Retirement Board.

Mr. FLORIO. In an amount in excess of the retirement?

Mr. MURPHY. No, sir. Only in an amount equal to the benefits, which is what we did disinvest after correction of the error.

Mr. FLORIO. To make it 100 percent clear, for future guidance, the Secretary has no legal authority to disinvest more than the required amounts needed for employment benefits, which are determined at the direction of the Board.

Mr. MURPHY. I agree.

Mr. FLORIO. Fine. Let me express my appreciation to both of you for your participation today, and we certainly will be working with you to make sure that the Railroad Retirement Board concept is followed through in accordance with the law.

Mr. MURPHY. Thank you, Mr. Chairman.

[The letter referred to by Mr. Florio follows:]

November 4, 1985

Mr. Patrick Wrenn
 Manager: Finance and Funding Branch
 Financial Management Service
 Madison Place & Pennsylvania Avenue, N.W.
 Treasury Annex #1
 Room 3055 - GAO Building
 Washington, D.C. 20226

Dear Mr. Wrenn:

In accordance with the Memorandum of Understanding signed November 3, 1979, and Section 15(a) of the Railroad Retirement Act of 1974 (P.L. 93-465, enacted October 16, 1974), we request that you use the proceeds of maturing investments, and if necessary redeem par value specials with accrued interest in amounts to cover disbursements for the Railroad Retirement, Railroad Social Security Equivalent Benefit and Railroad Retirement Supplemental Accounts as of November 1, 1985.

Railroad Social Security Equivalent Benefit Account (60XR010)	\$302,830,000.00
Direct Deposit (11-1-85)	\$140,103,775.00
(11-7-85)	92,707,735.00
(11-8-85)	Balance
Railroad Retirement Account (60XR011)	\$178,063,260.00
Direct Deposit (11-1-85)	\$74,564,450.00
(11-7-85)	50,609,000.00
(11-8-85)	Balance
Railroad Retirement Supplemental Account (60XR012)	\$ 10,000,000.00
Direct Deposit (11-1-85)	\$4,321,514.00
(11-7-85)	3,371,050.00
(11-8-85)	Balance

Sincerely,

Kenneth P. Roehle

Kenneth P. Roehle
 Associate Executive Director
 for Fiscal Operations

cc: Board Members
 Executive Director
 Secretary to the Board
 Greg Barker - Treasury

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EXECUTIVE DIRECTOR
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Mr. FLORIO. Let me ask the members of the Railroad Retirement Board to come forward.

Gentlemen, we welcome you back to our committee. We are pleased to have you here. Any statements that you have will be entered into the record in their entirety, and we would ask you to go forward as you see fit.

STATEMENT OF ROBERT A. GIELOW, CHAIRMAN, RAILROAD RETIREMENT BOARD, ACCOMPANIED BY CHARLES J. CHAMBERLAIN, LABOR MEMBER; JOHN D. CRAWFORD, MANAGEMENT MEMBER; AND KENNETH P. BOEHNE, ASSOCIATE EXECUTIVE DIRECTOR OF FISCAL OPERATIONS

Mr. GIELOW. Thank you, Mr. Chairman. I am Robert Gielow, Chairman of the Railroad Retirement Board.

I would just like to paraphrase my brief statement, which, in effect, confirms the chronology of events that you have been discussing here this morning, and just add that under normal procedures, at the beginning of each month the Board does advise the Department of the Treasury as to the benefits payable from the social security equivalent benefit account, the railroad retirement account, and the railroad retirement supplemental account.

We request the Treasury to redeem securities held by these accounts in an amount sufficient to cover the benefits. The Board did follow its usual procedure in November; however, in conversations held with Treasury officials on November 4, 5, and 6, we were advised that Treasury had, in fact, disinvested about \$445 million more of railroad retirement account securities than was needed to pay the benefits from that account.

On receiving this information, the Board directed a letter to the Secretary of the Treasury, pointing out that by law securities held by the railroad retirement account may be redeemed or otherwise disposed of only upon the request of the Board. Since it appeared that someone had attempted to take a disinvestment action which was not authorized, the Board requested that the Treasury's records be corrected to show that there was no effective disinvestment of railroad retirement account funds in excess of those needed to pay benefits.

Subsequently the Board was advised that \$321 million of the excess amount was reinvested as of November 1, and that an additional amount was reinvested on November 8 to cover the remaining excess disinvestment.

In addition, the Board has been advised that action will be taken to cover any interest lost as a result of not following the usual procedures for redeeming securities held by the account.

At this point, it appears that the railroad retirement account will not suffer any loss.

That concludes my statement.

Mr. FLORIO. Thank you. Is that statement on behalf of the Board?

Mr. GIELOW. Yes.

Mr. FLORIO. Thank you very much. I appreciate the point you have made, and it may very well be that the determination is that there has been no loss to the Board at this point, although I am

still not clear and not comfortable with this idea that it is only going to take statutory—requires statutory authority in order to have reimbursement of the loss of the interest, which I assume is interest on the float. I am not sure that I agree that there is not an obligation on the part of the Government to reimburse the fund, absent that authority. But we will get into that in a minute.

We may very well have the same dilemma again in December. As I understand what it is that is happening around here, we could be in the same situation in December. I certainly do not want to see that happen, and I trust that it will not happen, and that you do not want to see that happen as well.

I think it has been acknowledged by the Treasury that there is an error—clerical, mathematics, or whatever; it is something that is clear. I think it is also acknowledged by the Treasury that what happened was extralegal, if not illegal, in terms of the authority of the Treasury Department to unilaterally disinvest in excess of the amount that you folks tell them is required to pay benefits.

There is not any doubt in your minds, is there, that you are the fiduciary responsible officials, fiduciary invested parties, who have the responsibility for calculating the amounts to be paid and informing the Treasury Department of that amount to be paid?

Mr. GIELOW. There is no question of our authority.

Mr. FLORIO. I am concerned about the question of timing. What the Treasury Department seemed to be saying is, that notwithstanding that they acknowledge the fact that you calculate the amount, that they can make decisions as to when to disinvest. I think that we all appreciate the fact that as an income-affecting decisionpower, that if one disinvests before it is needed to pay benefits, one can lose income.

The troubling part in the testimony from the gentleman from the Treasury is that he seemed to not regard the law as requiring him, the Treasury, to disinvest in direct proximity to the need to pay benefits out.

What is your view in terms of your authority to direct the Treasury, not only in the amounts of disinvestment, but also on the timing of disinvestment, so as to meet benefits payments when the benefits payments are due?

Mr. GIELOW. The answer to your question is that it comes under the heading of a float procedure. In other words, I do not think there is a statute that covers this, but there is a procedure which the Board and Treasury has followed as far as the float is concerned.

Basically, this has been—we have direct deposits that are made as of the 1st of the month. Then 60 percent of the funds are allowed for, during the next 4 working days. Then 40 percent more in 5 working days. This is basically an informal procedure between the Board and the Treasury, which covers the timing of when these checks are presented.

Mr. FLORIO. You say, "informal procedure." This would be reduced to a regulatory system? How long has this procedure been in effect?

Mr. GIELOW. I believe it came after the 1979 and 1980 legislation, but I think it was not implemented until probably 1982 or 1983.

Mr. Chamberlain, I believe, would be more familiar with the dates on that, since he was here at that time, and I was not.

Mr. CHAMBERLAIN. Mr. Chairman—as you know, you have been around a long time—there has always been a question, prior to 1974, concerning whether the railroad retirement funds were receiving maximum interest. In 1974, 15(e) was certainly highlighted, which clearly points out that the Board shall direct the Treasury on investments. Post-1974, the question was still raised by labor and management as to whether there was maximum yields on the funds. I assumed my position on the Board on October 25, 1977, and at that time, Mr. Oliver, the carrier member, who assumed his position 1 month ahead of me, and subsequently Mr. Adams came on board as chairman, got into this thing set up several meetings with Treasury to make sure that 15(e) was complied with.

And that resulted, after several meetings with high Treasury officials, in the memorandum of understanding dated November 8, 1979, which spelled out clearly the procedures to be followed by the Board. They have been followed since that date with no problems at all. In fact, we've had a good working relationship with the people at Treasury in implementing those provisions of that agreement.

Mr. FLORIO. Up until this month.

Mr. CHAMBERLAIN. Correct.

Mr. FLORIO. My concern, I think, is an obvious one—if there is no legally binding understanding with regard to the rate of disinvestment—I should not say, “rate-connoting amount”—but the timing of disinvestment. Let me make this into an academic question, we're not talking about this Board, not talking about this Treasury Department, not talking about this time, but some other Board, some other time, some other Treasury Department.

We have no assurance, because there is nothing in writing, there is nothing with the force of law. It is conceivable, under a worst-case scenario, that someone can use the flexibility, the looseness in the timing of disinvestment, to the detriment of the fund and the benefits of the fund without being in violation of the law, because there is no statement now, no written policy on questions of timing.

You do acknowledge, don't you, that the timing can have an adverse effect upon the rate of return?

Mr. GIELOW. That is true of any float. When is the check going to be presented?

Mr. FLORIO. So if someone wanted to get into a cross-subsidization, they would be able to use a slush fund to be able to compensate for a governmental system in to or other funds that may not be flush. The conscious policy of investing earlier or later or disinvesting earlier or later is something that we should be concerned about.

Mr. CHAMBERLAIN. I think the memorandum of understanding clearly spells out the procedures, and they have been followed, as I understand it from our investment committee, rather religiously. And I think in this particular case, the transaction of November 1, everything was fine. We first found out about it, as I recall on November 4 when our committee alerted us to the fact that perhaps

there had been some errors in disinvestment, and we immediately convened the Board informally the next morning.

Mr. FLORIO. How did this take place without your being aware of it until 4 days after it occurred?

Mr. CHAMBERLAIN. We were alerted to it late Monday. We met on the subject on Tuesday morning, the 5th. Since it is a very complex process and procedure, we requested our committee to make sure and give us the factual data as to actually what happened and what the figures were and loss of interest, if any. They did that in conversations between them and Treasury. I think it was on the—we met again on the 5th and the 6th and put our letter out on November 7, because it had been determined that, yes, in fact, there was a disinvestment that should not have taken place.

Mr. FLORIO. Let me yield to the gentleman from Mississippi.

Mr. DOWDY. Let me ask again so that I can understand it. Does the memorandum of understanding from 1979 relate to the procedure which the chairman discussed, an understanding between the Board and Treasury that—what was it—60 percent of the disinvestment for any month would take place on the 1st day of the month? Is that what the memorandum states?

Mr. GIELOW. Sixty percent the 4th day, and then in 5 days, the other 40 percent.

Mr. DOWDY. Were there—in your conversations in November with the Treasury Department, any indications from them that the normal procedure would not be followed? Did they give you any type of notice that they would be disinvesting a few days early?

Mr. CHAMBERLAIN. The conversations were with our investment committee. They were not with the Board directly.

Mr. GIELOW. No.

Mr. DOWDY. Did the Treasury tell the investment committee in November that the regular procedure would not be followed?

Mr. CRAWFORD. According to Mr. Solomon's summary of the transactions, we did not know about this until November 4 when Treasury contacted us and told us how much had been disinvested on November 1, the previous Friday.

Mr. GIELOW. I think it might clarify things if we asked our chief fiscal officer, who is the one that basically conducts the conversations with Treasury, to give you an answer to that statement, if we may ask him to do so.

Mr. FLORIO. Certainly.

Mr. BOEHNE. I am the one who signed the letter to Treasury directing the timing and amounts of disinvestment. The normal procedure was followed on behalf of the Board, and as it has already been stated, the Board was not informed until November 4, when Treasury informed our chief actuary, who basically handles—he is on the committee, along with two others—investing the funds.

I think there is some clarification needed as far as what the agreement says. Treasury has followed the agreement for investing funds. As far as the voluntary procedure regarding the float that the gentleman from Treasury mentioned, that is true; it is voluntary on Treasury's part. It is unilateral on their part to decide the extent to which to allow for the float. They can decide exactly when they are going to disinvest the money to pay the benefits. The benefits are due and payable on November 1.

As I state in my letter, the normal practice is for us to tell them how much is needed for the direct deposits, and this is based on schedules of benefits that we receive from our program bureau, and also to tell them how much to disinvest 4 working days later and 5 working days later, and that practice has always been followed in the past. And this time, they varied from that practice.

Mr. DOWDY. Here, again, was there any indication from the Treasury that that practice would not be followed?

Mr. BOEHNE. No. We received no indication from the Treasury until they informed the chief actuary on November 4.

Mr. DOWDY. I don't have any more questions.

Mr. FLORIO. What do you anticipate is the practice for the coming month? Have you been informed that there is going to be a duplication of the practice of early redemption?

Mr. BOEHNE. No, we have not received any information about what the practice will be for December 1. What we will do is send in our normal request, spelling out, based on the exact payment vouchers, the amounts to be disinvested on December 1 for the direct deposits and the amounts to be disinvested 4 and 5 days later, based on the voluntary agreement with Treasury to give us additional investment for the float.

Mr. FLORIO. What does the Board regard as its obligation? Let's assume that we have a new continuing practice that you send in your suggestions as to what it is for disinvestment or what the—so that you maximize the investment income to the fund, and someone just says, "Well, that is fine. Our interpretation of our responsibility is, the payments are paid on the 1st of December. If we want to disinvest for the whole month at one time, we are going to do that?"

Does the Board regard themselves as having any authority to maximize the investment income to the fund by not providing for disinvestment in one fell swoop?

Mr. GIELOW. I think we would take Treasury at its word and say that this was a mistake and would watch carefully on December 1.

Mr. FLORIO. They did not acknowledge this was a mistake in terms of the disinvestment rate or timing. They acknowledged that they disinvested more money than they should have to make payments, but I did not—I will review the record—I do not think that they acknowledged that there was a mistake for them to sell off at variance with your instructions, which has been the time-honored practice to follow your instructions as to when you needed the money and when the sales had to take place.

I am not sure that they regard that as a violation of the law, although in the area of the amounts, they do acknowledge that there was a mistake.

I am interested in what your perception is of your responsibility and your authority in directing them to make these sales over the course of the month, the understanding to this point being that the rate of the sale does have an impact on the rate of return to the fund, which is designed to maximize it, which is your key responsibility.

Mr. GIELOW. I think there are two points. One is the timing of the sales, and the other is the use of the float. There is no question in my mind about our authority as to the timing of the sale. But I

think that basically Treasury has the—and can really only control, the float.

Mr. FLORIO. When you are talking about two steps, it can lose the fund money. Earlier sale than is required to meet your statutory needs means loss of money to the fund. Loss of the money and the benefits of the float back to the fund is another opportunity for you to lose money for the benefit of the fund. So you are getting two bites at the apple on the part of—in this instance, it is Treasury—that is being undertaken to the detriment of the fund.

If we acknowledge that is the case, which I think it is, my question, then, to the Board is: What do you regard as your responsibilities to take action or to assert responsibility not to let those things happen?

Mr. GIELOW. I think I would ask Mr. Boehne if we have any records or any information that would give us an ongoing or a current record of what the float would be, that we could transmit to Treasury. It seems to me, it is a flow from Treasury to us, rather than the other way around.

Mr. BOEHNE. The benefits are due and payable on November 1, and I think actually what can be done is to try to firm up the agreement with Treasury as far as making sure that what happened on November 1 does not happen again.

Possibly a further step to that would be just to enhance the legislation to specify that the Board is entitled to the float and that we should receive all of the investment income that we possibly can.

But again, this has been somewhat of an agreement between Treasury and us until November 1. They abided by it, and you are right, on November 1—something else happened.

Mr. FLORIO. If the gentleman has no further questions, let me express my appreciation. But we would also like to stay in very close communication with you between now and the end of the year, so as to be able to document that this is a unique, one-time aberration and not the initiation of a new policy that is going to be continued. That, I think, we all acknowledge, would work against the interests of the fund.

In the event that it is just this one-time situation, nobody is happy about it, but it has happened. We would be very concerned if we see that it is going to develop, particular the timing question, if it is going to be developing into a repudiation of the voluntary agreement that has been undertaken, and then maybe we are not going to allow it to continue as a voluntary agreement, and there may be a need to make changes in the law.

If there is nothing else that you have to communicate to us, let me express my appreciation to the Board once again.

Thank you.

[Whereupon, at 10:40 a.m., the hearing was adjourned.]

[The following material was submitted for the record:]

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

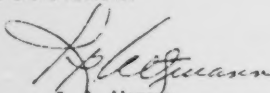
Memorandum

TO : Legislative Counsel

FROM : Executive Director

SUBJECT: Disinvestment

Attached is the Board's response to the questions asked by Congressman Coats on the disinvestments of the Railroad Retirement Account.



R. G. Altmann

Mr. Coats: Under current procedure, the Railroad Retirement Board, at the first of each month, requests the Treasury Department to disinvest certain sums of money that are needed to pay railroad retirement benefits. The Treasury Department has extended a "float" period to the Railroad Retirement Account. This is in accordance with the results of a study that concluded that benefit recipients do not cash their checks for an average of four business days. Therefore, the Treasury Department disinvests on the first of the month funds from the Railroad Retirement Account to pay benefits which are directly deposited to beneficiaries' accounts. Funds to pay for benefits paid through checks mailed to beneficiaries are disinvested four and five business days after the first of the month. Benefit checks which are cashed before the funds are disinvested from the Retirement Account are financed through other funds in the General Treasury. The Railroad Retirement Account earns a substantial amount of interest income due to this "float" period. The Treasury Department testified that on November 1, 1985, there were not enough funds in the Treasury to pay the Government's outstanding debts, or finance the "float" period normally extended to the Railroad Retirement Account. Due to this situation, it disinvested the Railroad Retirement Account earlier than usual. If the Treasury Department had been required to extend the "float" period to the Railroad Retirement Account, wouldn't it have been possible that those benefit checks cashed before the average four day period would have bounced?

Mr. Gielow: We do not know whether those benefit checks cashed before the average 4-day period would have bounced. We expect that the Department of the Treasury would have issued instructions to Federal Reserve Banks regarding disposition of Federal payments.

Mr. Coats: On the other hand, if the Treasury Department was required to disinvest all the funds necessary to finance benefits at the first of each month, wouldn't the Railroad Retirement Account lose substantial interest income?

Mr. Gielow: If the Treasury Department was required to disinvest all funds needed from the Railroad Retirement Account at the first of each month, about \$2 million could be lost annually.

- Mr. Coats: The Treasury Department has calculated that the accelerated disinvestment of the Railroad Retirement Account will result in a loss of \$161,739.00 to the Railroad Retirement Account. Do you agree with this calculation?
- Mr. Gielow: We agree with the Treasury Department that the Railroad Retirement Account would lose about \$160,739.
- Mr. Coats: What will the long-term effect of this loss be on the ability of the Railroad Retirement Account to pay benefits?
- Mr. Gielow: The long-term effect would be the nonavailability of the \$160,739 plus interest to pay benefits. However, we do not expect to lose the \$160,739. In a letter dated November 19, 1985, from Mr. Gerald Murphy, Acting Fiscal Assistant Secretary, Department of the Treasury, we were informed that all errors were corrected as of the date they occurred, "and the Railroad Retirement Account will suffer no interest loss."
- Mr. Coats: The Railroad Retirement Board has informed my staff that if the error of \$455 million made by the Treasury Department had not been corrected the mistake could have had a "substantial" effect on the Railroad Retirement Account's ability to pay benefits. However, in the "Sixteenth Actuarial Valuation" the Board recommends a 1% diversion of the Railroad Retirement Tier 2 taxes to the Railroad Unemployment Insurance Account to repay the debt owed by the Unemployment Account to the Retirement Account. In fact, this is forgiving approximately \$500 million owed by the unemployment account to the retirement account. If a \$455 million error could have a substantial effect on the retirement account, why wouldn't a forgiveness of \$500 million of the loan owed to the Retirement Account have such an effect?
- Mr. Gielow: Because the Board is responsible for ensuring funds are properly invested in interest bearing accounts and for guarding the integrity of its programs, we were concerned that the \$455 million was taken out of an interest bearing account and placed in a non-interest bearing account. At issue was the interest lost had this \$455 million not been reinvested.

Section 502 of the Solvency Act provides that the Board submit to the Congress, by July 1 of each year starting in 1985, a report on the actuarial status of the railroad retirement system. The report is to include

recommendations for any financing changes which might be advisable. The report is to make recommendations regarding (1) the level of the tax rates, and (2) if there are sufficient reserves in the Railroad Retirement Account, whether the tax rates can be reduced or whether any part of the tax rate on employers can be diverted to the Railroad Unemployment Insurance Account to aid in the repayment of its debt to the Railroad Retirement Account. The Sixteenth Actuarial Valuation, which incorporated the report required under Section 502 for 1985, recommended the diversion of 1 percent of tier 2 payroll subject to the following conditions: (a) any extension of the Railroad Unemployment Insurance Account's authority to borrow from the Railroad Retirement Account beyond September 30, 1985, is accompanied by a mechanism (other than further diversion of tier 2 taxes) which will ensure swift and full repayment of such future loans, (b) the portion of tier 2 taxes which is diverted to the Railroad Unemployment Insurance Account is rechanneled back to the Railroad Retirement Account once the debt is repaid, and (c) other forms of repayment to the Railroad Retirement Account, such as the Railroad Unemployment Repayment Tax, are left to operate as they would have in the absence of the recommended supplementation.

The valuation pointed out that, under the intermediate employment assumption, cash-flow problems arise in the year 2014; the recommended diversion would bring about cash-flow problems in 2013. It further pointed out that diversion of taxes does not change the year, 2005, in which cash-flow problems arise under the pessimistic employment assumption, and does not bring about problems under the optimistic employment assumption. The recommended diversion thus will not have a substantial impact on the magnitude or timing of any corrective action that may become necessary and will not be a significant factor in bringing about funding problems.

Mr. Coats: In the "Sixteenth Actuarial Valuation," the 1% diversion is supported by the statement that while the diversion "would have a negative impact on the Railroad Retirement Account, the impact would be small." How could the impact of any diversion be small on an Account which was on the brink of insolvency just two years ago and when the long-term solvency of that Account is still questionable? I agree with the Board's concern about the \$455 million mistake made by the Treasury Department, but why is the Board concerned about that mistake on one hand, and on the other hand recommending a diversion which in effect forgives \$500 million owed to the Retirement Account?

Mr. Gielow: As was pointed out in the response to your previous question, the Board's concern was directed at the few days of interest that would have been lost on the \$455 million because of its responsibility for program integrity and because of the fiduciary responsibilities placed on the Board by the 1974 Act regarding investment of funds.

The diversion recommended in the Sixteenth Actuarial Valuation will not have a substantial impact on the magnitude or timing of any corrective action that may become necessary, and will not contribute significantly to the development of any problems.

As future implications of the erroneous disinvestment were not immediately apparent, there was concern that the loss of interest, compounded over many years, might contribute to adverse cash-flow predictions in the future. When it is considered that this would have resulted from an error rather than from actions of the Congress, such an effect upon the payment of benefits could well be said to be substantial, even though it might actually be relatively small in the context of the cash-flow problem as a whole.

Mr. Coats: In the "Sixteenth Actuarial Valuation," it is stated that the long-term stability of the Railroad Retirement Account is questionable. What action needs to be taken to ensure the long-term solvency of the retirement account?

Mr. Gielow: Whether any corrective action needs to be taken to ensure the long-term solvency of the Railroad Retirement Account depends on the future level of railroad employment. The Railroad Retirement Solvency Act of 1983 requires the Board to submit annual recommendations regarding the level of the tax rates. The 1985 recommendation, contained in the Sixteenth Actuarial Valuation, was that no change in the level of the tax rates be made at this time. The valuation stated that changes could be recommended in future reports on the basis of past experience and the outlook for railroad employment at that time.

DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

DEC 24 1985

Dear Mr. Coats:

This letter responds to the questions on the use of Railroad Retirement funds raised in your letter of December 3, 1985.

1) Q. When the Treasury Department accelerated the disinvestment of funds from the Railroad Retirement Account on November 1, 1985, did it violate the law? Please explain your answer.

A. Treasury's actions on November 1 did not violate the law. As discussed in my testimony, since Railroad Retirement checks are issued on the first of each month, it had been the practice of the Railroad Retirement Board to request that Treasury redeem the amount of securities necessary to pay benefits on the first of each month. In 1980, as part of a general policy decision involving all major retirement funds, Treasury provided the Railroad Retirement Account with two days of "float" by redeeming some securities on the third business day of the month rather than the first. In 1984, the float was extended to 4.4 days, to maintain consistency with the other major retirement funds. These decisions, which benefit the Railroad Retirement Account, were both made independently by Treasury. The actions in November, which were essential to make certain that Railroad Retirement benefit checks were honored when presented, represented a small but essential modification, in extraordinary circumstances, of Treasury's earlier actions.

2) Q. Why was the acceleration of disinvestment necessary?

A. On October 31, the operating cash balance was \$1.6 billion. To be able to make the benefit payments on November 1 for Civil Service, Social Security, and Railroad Retirement, it was necessary to raise cash in the market. Due to the debt limit, Treasury could not issue securities to the market to raise cash without redeeming other securities. By accelerating the disinvestment of Civil Service, Social Security, and Railroad Retirement, the debt outstanding was reduced, making room to go into the market and sell securities (which brought the debt back to the limit) to raise the cash necessary to pay the benefits. As discussed in my testimony, the amount of securities disinvested from each fund was only that necessary to pay benefits from that fund.

3) Q. How much interest was lost?

A. The amount of interest lost by Railroad Retirement due to the acceleration of the disinvestment was approximately \$160,739.00.

4. Q. If the law had required that the float be allowed, is it possible that some of the checks mailed to railroad retirees would have bounced?

A. The checks would not have been paid when presented and the wire transfer credits on the first of November would not have been made. To be able to credit the retirees with direct deposit funds on the first of November, the Federal Reserve banks would have had to charge the Treasury's cash account for the amount of the transfer. Without the accelerated disinvestment and subsequent raising of new cash, there would not have been adequate funds to pay all of the checks and wire transfers submitted that day. The Federal Reserve Board will not prioritize payments and, therefore, would have made no transfers until adequate funds were available to pay all charges submitted that day.

5) Q. The mistaken disinvestment of \$445 million was corrected. Was any interest income lost due to the mistake?

A. No interest was lost due to the mistaken disinvestment of \$445 million. The correction of \$321 million on November 1 was corrected by an "as of" November 1 investment for Railroad Retirement. A similar transaction was done on November 4 for the \$123 million error.

6) Q. Is there a system in place to catch errors?

A. Yes, the system requires the Railroad Retirement Board to follow up with hard copy confirmation of their instructions and Treasury to provide confirmation to Railroad Retirement Board of the transactions affected. This procedure was followed which is how the error was discovered so quickly. The procedure is effective as indicated in that it provides confirmation of transactions in a timely manner to be able to effect any corrections that are necessary.

Sincerely,

Gerald Murphy
Acting Fiscal Assistant Secretary

The Honorable
Dan Coats
House of Representatives
Washington, D. C. 20515

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RAILROAD RETIREMENT AND UNEMPLOYMENT BENEFITS PROTECTION ACT OF 1986

THURSDAY, MAY 1, 1986

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRANSPORTATION, AND TOURISM,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2322, Rayburn House Office Building, Hon. James J. Florio (chairman) presiding.

Mr. FLORIO. Ladies and gentlemen, we welcome you all to our hearing today on legislation that has been introduced by myself and a number of Members of Congress, H.R. 4338, the Railroad Retirement and Unemployment Benefits Protection Act of 1986.

This is an important piece of legislation designed to protect railroad retirees and unemployed railroad workers from the effects of the Gramm-Rudman Act.

Railroad retirees have sacrificed greatly in recent years to keep their retirement system solvent. The sacrifices, painful as they have been, have worked. The system is now healthy and capable of paying full benefits.

Yet, in the name of the Gramm-Rudman Act, railroad retirees are now being asked to sacrifice yet again and give up additional earned benefits.

This year alone, Gramm-Rudman will take about \$35 million from the pockets of railroad retirees. In particular, the law eliminated the January cost-of-living adjustment for the tier II benefits. This COLA elimination does not make any sense whatsoever, since the railroad retirement benefits are paid from a self-contained trust fund which is currently financially healthy.

In addition, many railroad retirees receive an additional component, the dual benefit component. The Gramm-Rudman amendment required that these benefits be subject to cutback.

As a result of Gramm-Rudman, the dual benefit component was cut by 7.7 percent starting on the 1st of April of this year.

Gramm-Rudman may also result in the reduction of railroad unemployment insurance benefits. Unemployed railroad workers already receive among the lowest unemployment benefits, at \$125 per week. Any reduction in that amount is unfair to unemployed rail workers, particularly when basic State unemployment insurance benefits are exempt from Gramm-Rudman.

Finally, the administrative expenses of the Railroad Retirement Board will be reduced by 4.3 percent by Gramm-Rudman. Since

these expenses are paid out of the retirement and unemployment insurance funds, and are not from the general revenue, they should not be reduced and will have no impact whatsoever, that is the reductions will have no impact whatsoever on the deficit.

These Gramm-Rudman reductions will only result in poor service to retirees and unemployed rail workers.

Starting October 1, 1986, the cutbacks required by Gramm-Rudman would be even more severe. The tier II COLA would again be eliminated, and the cut in dual benefits and railroad unemployment insurance benefits could be even larger.

This legislation, H.R. 4338, would restore the tier II COLA that was taken away in January, ensure that all future COLA's be paid, and would prevent reduction in dual benefits.

Railroad unemployment insurance benefits and the administrative expenses available to the Board would also be preserved.

I look forward to hearing the views of our witnesses, and I think it really is a sad day when the Government of the United States is effectively taking, one might if you want to call the rhetoric, almost stealing, of earned, self-financed benefits from workers who have worked through their whole career, had had expectations as to what it is that they would receive, and now in the midst of their retirement are getting the word that some actions in Washington are taking away those benefits that people have received.

I think that is a sad day, and I am hopeful this legislation can be supported, and that we will make sure that everyone understands that when we play by the rules of the game, that we all play, and continue to play by the rules of the game rather than trying to change them.

[The text of H.R. 4338 follows:]

99TH CONGRESS
2D SESSION

H. R. 4338

To amend the Railroad Retirement Act of 1974 to prevent the elimination of certain cost of living increases in certain annuity amounts, to prevent other benefit reductions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 1986

Mr. FLORIO (for himself, Mr. DOWDY of Mississippi, Mr. RICHARDSON, Ms. MIKULSKI, Mr. OBERSTAR, Mr. SHUSTER, Mr. RAHALL, Mr. STAGGERS, Mr. RINALDO, and Mr. TOWNSEND) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Railroad Retirement Act of 1974 to prevent the elimination of certain cost of living increases in certain annuity amounts, to prevent other benefit reductions, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1. SHORT TITLE.**

- 4 This Act may be cited as the "Railroad Retirement and
- 5 Unemployment Benefits Protection Act of 1986".



1 **SEC. 2. TIER II COLAS.**

2 Section 3(g)(1) of the Railroad Retirement Act of 1974
3 (45 U.S.C. 231b(g)(1)) is amended by inserting “, shall not
4 otherwise be prevented from taking effect by any provision of
5 law other than this Act,” after “shall not be deferred”.

6 **SEC. 3. DUAL BENEFITS PROTECTION FROM REDUCTION.**

7 Section 15(d) of the Railroad Retirement Act of 1974
8 (45 U.S.C. 231n(d)) is amended by adding at the end the
9 following:

10 “(7) No amount appropriated to the Dual Benefits Pay-
11 ment Account shall be sequestered or otherwise prevented
12 from obligation or expenditure by any provision of law other
13 than this Act.”.

14 **SEC. 4. RAILROAD UNEMPLOYMENT BENEFITS.**

15 Section 10(b) of the Railroad Unemployment Insurance
16 Act is amended by inserting after the second sentence thereof
17 the following: “The availability of any money in the account
18 for the payment of such benefits shall not be limited or other-
19 wise affected by any provision of law other than this Act.”.

20 **SEC. 5. RAILROAD RETIREMENT BOARD ADMINISTRATIVE EX-**

21 **PENSES.**

22 (a) **RAILROAD RETIREMENT.**—Section 15(a) of the
23 Railroad Retirement Act of 1974 (45 U.S.C. 231n(a)) is
24 amended by adding at the end the following: “No amount
25 available for expenses necessary for the Board in the admin-
26 istration of this Act shall be sequestered or otherwise pre-

1 vented from obligation or expenditure by any provision of law
2 other than this Act, except a provision of an appropriation
3 Act setting a limitation on funds to be derived from any ac-
4 count for expenses necessary for the Board in the administra-
5 tion of this Act.”.

6 (b) RAILROAD UNEMPLOYMENT INSURANCE.—Section
7 11(a) of the Railroad Unemployment Insurance Act is
8 amended by adding at the end the following: “No amount
9 available to the Board for expenses necessary or incidental to
10 administering this Act shall be sequestered or otherwise pre-
11 vented from obligation or expenditure by any provision of law
12 other than this Act.”.

13 **SEC. 6. EFFECTIVE DATE.**

14 The amendments made by this Act shall take effect as
15 of December 12, 1985.

○

Mr. FLORIO. I would like to, at this time, recognize the gentleman from Indiana, Mr. Coats.

Mr. COATS. Thank you, Mr. Chairman. This morning the subcommittee is considering H.R. 4338, which would exclude railroad retirement, railroad unemployment insurance, and the Railroad Retirement Board's administrative expenses from the effects of the Gramm-Rudman Act.

I am not sure that this is the appropriate time to begin exempting programs from Gramm-Rudman. Projected Federal deficit for fiscal year 1986 is considerable, as we all know, and we must begin reducing this deficit now, and all Federal programs, I think, should contribute to the effort. In fact, the more they contribute, the less each individual program has to absorb.

However, I am encouraged to see that you, Mr. Chairman, are concerned about railroad retirees, as you have been for many years, and unemployed rail workers. I, along with a number of my colleagues, have been trying to bring the problems of the railroad unemployment and retirement accounts before this subcommittee for some time.

The railroad unemployment insurance account is over \$800 million in debt to the retirement account. Despite this tremendous debt, unemployed rail workers receive among the lowest benefits in this country.

Forty-two States, covering some 85 percent of all railroad workers, provide higher maximum weekly unemployment benefits than the railroad unemployment system provides.

Despite this fact, the Railroad Retirement Board has informed me that that unemployment account has \$71 million left over from fiscal year 1985. This is certainly a strange state of affairs. An account which is in debt over \$800 million and pays low benefits, having a surplus of \$71 million.

Obviously, the financial status of the railroad unemployment account needs to be closely scrutinized.

Some of the problems of the RUIA system were addressed in the consolidated Budget Reconciliation Act of 1986. However, not all of the problems were addressed. Problems which are still outstanding include the low unemployment benefits of unemployed rail workers, and second, the debt of the unemployment account which will not be fully repaid under current law, even with the increase in the repayment tax, which was included in the reconciliation.

I have introduced a bill, H.R. 2454, the Railroad Unemployment Insurance Solvency Act, which addresses these problems. H.R. 4338, which we are considering today, exempts the unemployment account from Gramm-Rudman.

However, Gramm-Rudman is not the real problem facing the railroad unemployment system. It is anticipated that Gramm-Rudman will have no real effects on RUI benefits. Under Gramm-Rudman, as you know, the RUI account cannot pay out more than approximately \$280 million during fiscal year 1986.

The Railroad Retirement Board estimates that it will pay out approximately \$172 million in benefits in fiscal year 1986, therefore, RUI benefits should not have to be cut under the effects of the Gramm-Rudman law.

The hearing today on H.R. 4338 will offer an excellent opportunity to address the low benefits that unemployed rail workers currently receive, and the huge debt of the unemployment account. The financial problems of the unemployment system are chronic. The future of the unemployment system is crucial to the approximately 41,000 furloughed workers. Congress has an obligation to address this issue, and I look forward to working with the chairman and my other colleagues in fashioning a proper solution to these problems.

I regret that a second hearing downstairs in this committee, on acid rain, which has also a dramatic impact on the State that I represent, is going on at this time. Witnesses with substantial economic stake in our district are testifying, and I need to be there and, therefore, can't participate fully in this hearing.

But I would like, Mr. Chairman, in lieu of the ranking member's absence, to ask unanimous consent to place in the record any other member statements that might be furnished to us, request to submit questions to the witnesses, and material that the committee has received from the Railroad Retirement Board.

Mr. FLORIO. Without objection, all of the members of the subcommittee will be provided with that opportunity to insert their statements.

Mr. COATS. Thank you.

[The following information was submitted for the record:]

RAILROAD RETIREMENT BOARD

The Federal Register of January 15, 1986, contained the first joint OMB/CBO report required under Public Law 99-177, Gramm-Rudman-Hollings, (GRH).

Page 2024 of that issue of the Register (page 83 of the report) lays out the sequester baselines for the Department of Labor. Under the account titled "Unemployment trust fund (Unemployment compensation)," (of which the Railroad Unemployment Insurance Account is a component), the sequester baseline was \$204,274,000. The amount of these funds specified for sequestration was \$8,784,000. The allocation to the railroad unemployment system from those two amounts was a \$180,419,000 baseline and a \$7,758,000 sequestration.

On page 1935 of the January 15, register, the joint OMB/CBO report noted that "The sequestration of unemployment benefits for railroad workers would save \$7.8 million." Thus, it may have appeared initially that the sequestration might cause a benefit reduction, but that in no event would less than \$172.5 million be available for benefit payments even after application of the GRH 4.3% sequestration.

Upon discussions between the Board, OMB, and CBO, it was clarified and agreed that the sequestration applied to new budget authority. This meant that a cash carryover of \$71.1 million from fiscal 1985 was also still available for benefit payments.

Furthermore, the allocation of baseline authority allocated to the Board, to which the sequestration percentage was applied, was an early January "snapshot" under then current economic assumptions.

In fact, the Board's new budget authority for fiscal year 1986 under the RUIA programs will be approximately \$214.5, or approximately \$34.5 million more than the amount specified in the January joint report. An additional \$1.8 million transfer from administration is also available for benefits. Thus, a total of \$279.6 million will be available for RUIA benefits in fiscal 1986 after sequestration (amounts are in millions):

INCOME:

Contributions (including interest):	\$214.5
Cash carryover from fiscal 1985:	71.1
Transfer from Admin. Expenses:	1.8
Sequesters:	- 7.8
Total:	279.6

The Railroad Retirement Board anticipates benefit payments under the RUIA for fiscal 1986 of \$172.5. This contemplates full benefit payments. An apportionment of this amount was requested of OMB and that amount was apportioned. An amount of 107.1, in addition to the \$172.5, is also potentially available for benefit payments. This amount has also been apportioned as benefit payment potential (use of such money requires advance notice to OMB). The following is an outgo summary of this information (amounts are in millions):

OUTGO:

Unemployment payments:	\$129.0
Sickness benefits:	43.0
Supplemental ui benefits:	.5
benefit payment potential:	107.1
Total:	279.6

It should also be noted that Public Law 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, approved April 7, 1986, reinstated the authority of the Railroad Unemployment Insurance Account to borrow from the Railroad Retirement Account.

Mr. FLORIO. We are now pleased to—I think for the record I we should convey that representatives from the Office of Management and Budget were invited. Mr. Miller, specifically, was invited, and we have received the representation that they will not be able to be here, but they will send a statement for the record.

I think it is important to note that the invitation was extended, and the Office of Management and Budget was not inclined to be here, but will send a statement which will be put into the record when it is received.

[The OMB statement was not received for the record at the time of printing.]

Mr. COATS. Would the gentleman yield on that point?

Mr. FLORIO. Certainly.

Mr. COATS. I share the chairman's concern that a representative of the Office of Management and Budget is not here this morning.

It is fine to receive their written statement, but I think their verbal testimony and ability to be here to answer questions would have been important to this hearing, and I regret that they are not here.

Mr. FLORIO. Thank you very much. We now move to our first witness, Mr. Ole Berge, the chairman of the Railway Labor Executive Association, who is accompanied by our good friend, Mr. Jim Snyder, the chairman of the Legislative Committee of the Railway Labor Executive Committee, as well as Mr. William Mahoney, the attorney for the organization.

Mr. Berge.

STATEMENT OF OLE M. BERGE, CHAIRMAN, RAILWAY LABOR EXECUTIVES' ASSOCIATION, ACCOMPANIED BY JAMES R. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, AND WILLIAM MAHONEY, COUNSEL

Mr. BERGE. Thank you, Mr. Chairman. My name is Ole Berge, and I am president of the Brotherhood of Maintenance of Way Employees and chairman of the Railway Labor Executives' Association, as well as the chairman of the RLEA's Committee on Railroad Retirement.

With me, as you have noted, is our mutual friend, Mr. Snyder, who is the RLEA's chairman of our legislative committee, and Mr. Mahoney, who is RLEA's counsel.

Mr. FLORIO. Mr. Berge, I don't know, but I think it is important to just share with you that in our conversations with the Office of Management and Budget, at one point they indicated that they thought the Government would be represented because you were going to be here, and that someone attributed to you responsibility for the Department of Labor, because someone wasn't sure that the difference between your position on the Railroad Retirement Board and your role as a labor person, that all got translated into the expectation that, perhaps, you could represent the administration.

I assume you are not going to be representing the administration here today. Is that a fair assumption?

Mr. BERGE. That is a fair assumption.

Mr. FLORIO. Thank you.

Mr. BERGE. Mr. Snyder will comment later on RUIA matters. I appear before you on behalf of the RLEA in support of HR 4338.

Mr. Chairman, as you know, the railroad retirement and railroad unemployment insurance system in this country are fully self-supporting. All moneys paid to beneficiaries of these programs, with the exception of dual benefits which apply to about one-third of our retirees, are paid from the trust funds which are maintained entirely by taxes paid by the railroads and the railroad employees.

The entire cost of the administration of both systems is paid from these trust funds. The railroad retirement fund is solvent. The Gramm-Rudman Act should be permitted to have no effect upon the benefits paid employees under these systems, because all the monies involved are contributed by the railroad industry and their payment is restricted to railroad employees, active, furloughed, or retired.

The last several months have been most difficult for railroad retirees. They have been hit by a three way attack on their annuities.

First, the Gramm-Rudman-Hollings Act made severe unwarranted cuts in railroad retirement benefits. It eliminated our tier II COLA, it reduced dual benefits for over 300,000 dual beneficiaries by 7.7 percent.

Next, the Budget Reconciliation Act substantially increased income tax for many railroad retirees amid an already complicated system even more complex and difficult to understand and administer.

Finally, the President submitted his budget for fiscal year 1987. That budget would eliminate our next tier II COLA entirely. It would reduce all our future COLA's. It calls for brutal reductions in dual benefits.

It would require reductions in disability benefits for any of our members who recover under the Federal Employees Liability Act for injuries suffered on their jobs. It threatens again to privatize our retirement system and transfer our unemployment program to the Federal-State system.

Mr. Chairman, these actions are not justified. They are, indeed, grossly unfair to the retired and disabled railroad workers of this country.

In 1983, railroad labor and management joined in supporting one of the toughest and most agonizing pieces of legislation which I have ever been involved. That was the Solvency Act of 1983. Its purpose was to save the railroad retirement program, which was then in financial trouble. Because of the sacrifices shared in that act by rail labor, management, and railroad retirees, the act has worked.

Rail labor and management agree to have their already high employment taxes raised substantially. Employees now pay 4.25 percent over the social security rate. Employees now pay 14.75 percent over the social security rate.

It should be emphasized that these rates are in addition to the social security level tax which both employees and the carriers also pay. Retirees made heavy contributions to the Solvency Act through dramatic reductions, COLA offsets, and taxation of their tier II benefits.

The Solvency Act saved the railroad retirement program. The latest report of the board's actuary indicates that the system is sound for the rest of this century, even under low employment assumptions.

As a result of the sacrifices made in the Solvency Act, the railroad retirement system can pay in full its obligation to railroad retirees. But it is only as a result of the sacrifice of labor, management, and retirees in accepting higher payroll taxes, benefit reductions, COLA offsets, and income tax on their annuity.

Despite the Solvency Act, Mr. Chairman, Gramm-Rudman eliminated our 1982 tier II COLA. It did this even though our account is solvent. Even though the savings stay in the account, and cannot be used for any other purpose, and it did this despite the fact that the retirees have already been deprived of their 1984 and 1985 tier II COLA.

Gramm-Rudman reduced dual benefits, even though dual beneficiaries have already suffered unprecedented benefit reductions.

Dual beneficiaries were cut in the 1974 act, and in the 1981 amendments. They were cut in 1982, and were just cut again in April of this year, and as railroad retirees, they also experienced all the other recent benefit reductions.

The unemployment benefits of furloughed railroad workers are also being threatened by the operation of Gramm-Rudman. As I noted a moment ago, there simply is no justification for the reduction of unemployment benefits to furloughed railroad workers because none of these benefits are paid from the Treasury of the United States.

They can have no effect upon the revenues or expenses of the Government. Why is this being done to the system financed by trust funds, the moneys of which cannot be used for any other purpose?

The answer is that this unfair action is being undertaken to help offset, on paper, deficits elsewhere in the Federal budget. It is being done for no other reason.

H.R. 4338 would correct this unequitable situation by exempting from the operation of Gramm-Rudman both the railroad retirement and railroad unemployment insurance systems. We heartily support its enactment.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Berge follows:]

BEFORE THE
SUBCOMMITTEE ON COMMERCE,
TRANSPORTATION AND TOURISM
OF THE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT OF
O. M. BERGE
ON BEHALF OF THE
RAILWAY LABOR EXECUTIVES' ASSOCIATION

MAY 1, 1986

Mr. Chairman:

My name is Ole M. Berge. I am President of the Brotherhood of Maintenance of Way Employes and Chairman of the Railway Labor Executives' Association or RLEA as well as Chairman of the RLEA's Committee on Railroad Retirement. I appear before you on behalf of the RLEA in support of H.R. 4338.

The Railway Labor Executives' Association is an unincorporated association with which are affiliated the chief executive officers of all of the standard national and international railway labor unions in the United States. The organizations whose chief executive officers are members of the RLEA are listed below:

American Railway & Airway Supervisors Association,
Division of BRAC
American Train Dispatchers Association
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Brotherhood Railway Carmen of the United States and
Canada
Brotherhood of Railway, Airline & Steamship Clerks
Hotel & Restaurant Employees and Bartenders
International Union

International Association of Machinists & Aerospace
Workers
International Brotherhood of Boilermakers &
Blacksmiths
International Brotherhood of Electrical Workers
International Brotherhood of Firemen & Oilers
International Longshoremen's Association
National Marine Engineers' Beneficial Association
Sheet Metal Workers' International Association
Seafarers International Union of North America
Transport Workers Union of America
United Transportation Union

Mr. Chairman, as you so well know, the railroad retirement and railroad unemployment insurance system in this Country are fully self-supporting. All monies paid the beneficiaries of these programs, with the exception of dual benefits which apply to about one-third of our retirees, are paid from trust funds which are maintained entirely by taxes paid by the railroads and the railroad employees. The entire cost of the administration of both systems is paid from these trust funds.

The railroad retirement fund is solvent. The Gramm-Rudman Act should be permitted to have no effect upon the benefits paid employees under these systems because all of the monies involved are contributed by the railroad industry and their payment is restricted to railroad employees, active, furloughed or retired.

The last several months have been most difficult for railroad retirees. They have been hit by a 3-way attack upon their annuities.

First, the Gramm-Rudman-Hollings Act made severe and unwarranted cuts in railroad retirement benefits. It eliminated our Tier 2 Cola. It reduced dual benefit payments for over 300,000 dual beneficiaries by 7.7%.

Next, the Budget Reconciliation Act substantially increased income tax for many railroad retirees and made an already complicated system even more complex and difficult to understand and administer.

Finally, the President submitted his budget for fiscal year 1987. That budget would eliminate our next Tier 2 Cola entirely. It would reduce all our future Cola's. It calls for brutal reductions in dual benefits. It would require reductions in disability benefits for any of our employees who recover under the Federal Employers' Liability Act for injuries suffered on their jobs. It threatens again to privatize our retirement system and transfer our unemployment program to the federal/state system.

Mr. Chairman, these actions are not justified. They are, indeed, grossly unfair to the retired and disabled railroad workers of this Country. In 1983, railroad labor and management joined in supporting one of the toughest and most agonizing pieces of legislation with which I have ever been involved. That was the Solvency Act of 1983. Its purpose was to save the Railroad Retirement Program which was then in financial trouble. Because of the sacrifices shared in that Act by rail labor, management and railroad retirees, the Act worked.

Rail labor and management agreed to have their already high employment taxes raised substantially. Employees now pay 4.25% over the social security rate. Employers now pay 14.75% over the social security rate. It should be emphasized that these rates are in addition to the social security level tax which both employees and carriers also pay.

Retirees made heavy contributions to the Solvency Act through dramatic benefit reductions, Cola offsets, and taxation of their Tier 2 benefits.

The Solvency Act saved the railroad retirement program. The latest report of the Board's actuary indicates that the system is sound for the rest of this century even under low employment assumptions.

As a result of the sacrifices made in the Solvency Act, the railroad retirement system can pay in full its obligations to railroad retirees. But this is only as a result of the sacrifices of labor, management, and retirees in accepting higher payroll taxes, benefit reductions, Cola offsets, and income tax on their annuities.

Despite the Solvency Act, Mr. Chairman, Gramm-Rudman eliminated our 1986 Tier 2 Cola. It did this even though our account is solvent; even though the savings stay in the account and cannot be used for any other purpose. And it did this despite the fact that the retirees' have already been deprived of their 1984 and 1985 Tier 2 Cola's.

Gramm-Rudman reduced dual benefits even though dual beneficiaries have already suffered unprecedented benefit reductions. Dual beneficiaries were cut in the 1974 Act, and in the 1981 Amendments. They were cut in 1982, and they were just cut again in April. And, as railroad retirees, they also experienced all the other recent benefit reductions.

The unemployment benefits of furloughed railroad workers are also being threatened by the operation of Gramm-Rudman. As I

noted a moment ago, there simply is no justification for the reduction of unemployment benefits to furloughed railroad workers because none of these benefits are paid from the treasury of the United States. They can have no affect upon the revenues or expenses of the Government.

Why is this being done to systems financed by trust funds the monies in which cannot be used for any other purpose? The answer is this unfair action is being undertaken to help offset, on paper, deficits elsewhere in the federal budget. It is being done for no other reason.

H.R. 4338 would correct this inequitable situation by exempting from the operation of Gramm-Rudman both the Railroad Retirement and Railroad Unemployment Insurance systems.

We heartily support its enactment.

Mr. FLORIO. Thank you very much. Mr. Berge, I particularly noted your observation, which I think is correct, that any contribution these reductions will make will be on paper.

That is, the reductions will be required to be maintained in the trust fund unless someone at OMB figures out how to raid the trust fund, but we don't think that is going to happen. At least we will be diligent in making sure it doesn't happen. So, this whole discussion is extremely academic in terms of its contribution to deficit reduction. There will be no deficit reduction contribution as a result of taking benefits out of the railroad retirement system, and I think that is an appropriate observation you have made.

I don't think America understands what is going on in some of these areas. What we are talking about is employers and employees contributing to the system, and yet we are effectively dipping into that to provide for a paper contribution in the overall unified budget system. For the life of me, I can't understand why it is we deal with Social Security Trust Fund proposals in one way, and yet deal with Railroad Retirement Trust Fund proposals in a different way.

I would like to briefly touch upon the question about dual benefits. The dual benefit system, of course, went into operation in 1974, if I recall, and that was to eliminate the situation and provide for an alternative to some of your members, approximately one-third if I recall, who were entitled to Social Security, having Social Security, and having some of the railroad retirement benefits. This dual benefit is an opportunity to come up with an alternative approach.

Perhaps Mr. Mahoney could help me on this. Assume for a moment that we had not done that, and one-third of your members still were collecting under the old system. They would be entitled to, and presumably be collecting Social Security, is that the case? Is that the way the system operated?

Mr. MAHONEY. Excuse me. It is my understanding that the reason this was done was because of an imbalance that was created because benefits received by people who would have received more had they been under railroad retirement from the beginning, but they were under Social Security part of the time, railroad retirement part of the time, and they wanted to bring them up even.

And to answer your question, had they—had this not been the case, and they not received these funds, they would not now—I am sorry, I got off on that, and I forgot your question. I beg your pardon.

Mr. FLORIO. The question is, with regard to—if that had not been done, and the dual benefit concept had not been undertaken, some of your members would still be collecting the Social Security component as the process worked prior to that.

Mr. MAHONEY. Yes, that is correct. That is my understanding.

Mr. FLORIO. If I recall, the dual benefit component was a compromise that some perceived of as providing for almost a reduction. In other words, the two benefit opportunity, the dual benefit concept was one—let me ask this—it is obviously so confusing we can't even frame the questions.

Why don't you give us your view as to the impact of the dual benefit component initiative, and how it changed the benefits that

flowed to railroad retirees who had worked for a sufficient period of time under Social Security, that were in a position to collect both ways.

Mr. MAHONEY. This was put into effect so that they wouldn't lose under either system, and it was to give them credit for both systems, full credit for both systems, and this ended up giving them more money than they would have otherwise received.

Mr. FLORIO. It does not, did you say?

Mr. MAHONEY. It does.

Mr. FLORIO. It does.

Mr. MAHONEY. It would have ended up giving them more money than they would have otherwise received if they had stayed in one or the other. By putting together the two—I am getting as confused as you are, Mr. Chairman.

It brought them up to the point where they would have been under railroad retirement had they been under that system all the way along, and that was the—and that came about and was made an appropriation. The Congress did that as an appropriation.

Now, if that were taken away, they had not had that, they would not have been in---

Mr. FLORIO. There are some, Mr. Mahoney, who regard that proposal as a compromise proposal that in some respects was done and the net impact of it was to take away the opportunity for some employees to take part in both systems.

Mr. MAHONEY. That is correct.

Mr. FLORIO. And that under some analyses that we have seen, taking part in both systems would have had a cumulative benefit to employees that is greater than the dual benefit system that is currently the case.

Mr. MAHONEY. That is correct.

Mr. FLORIO. Therefore, my point is, that was a sacrifice that employees made at that point. Now, we are talking about an additional sacrifice because under the proposal that is being floated out, and already is taking place, we have had a 7-percent reduction with higher reductions anticipated under Gramm-Rudman. The purpose of all of this is to highlight the inequity of the two bites at the apple, in this case the apple is the railroad retirees' apple, the two bite of the apple approach that is being followed by some, the first bite being 1974, the second bite being 1986.

Is my analysis correct, in this latest formulation of it?

Mr. MAHONEY. Yes, it is.

Mr. FLORIO. With regard to, Mr. Berge, the administration of the Railroad Retirement and the Railroad Unemployment Insurance Act by the Board, as I represented and I think you have verified, the Board's administrative expenses come out of not general revenues, but again come out of this self-financed fund.

Mr. BERGE. That is true.

Mr. FLORIO. Therefore, it would appear that there isn't a legitimate reason for saying that these cuts—certainly they have to have some impact, and I would like your response to what impacts they will have.

These cuts will not contribute to deficit reduction, and will have an impact upon the ability of the Board to carry out its responsibilities on the retirement side and the unemployment side. Can you

give us some sense of what it is you have had to experience already, and what it is you anticipate experiencing if the second round of Gramm-Rudman goes into effect on October 1?

Mr. BERGE. It would appear to me that if it goes into effect it will severely impact on the Board's ability to service the beneficiaries.

As you know, the staff at the Board has been reduced over the past years on a regular basis. Now, because of Gramm-Rudman, there is going to be extra bookkeeping, if that is the proper term, they have to take care of some 500,000 beneficiaries for tax purposes and at the same time keep track of those for benefit purposes, to make sure they get the benefits they are entitled to.

That is an additional burden on the Board that they do not now have. They are expected to do that with even fewer people than they have now, and they don't have a sufficient staff to do all the things they should do, such as watch for errors, correct them, and things like that.

So, it would severely impact on the Board's ability to service our constituents.

Mr. FLORIO. In the 1987 budget proposal of the administration, there are representations and proposals for further cuts in railroad retirement benefits. Have you seen or are you privy to any information with regard to legislation that the administration or anyone else is advocating to implement those proposals? The proposals are hanging out there in the abstract.

Mr. BERGE. No, I am not.

Mr. FLORIO. Mr. Coats was here earlier and spoke about his proposal, which I am sure you are familiar with on the unemployment side, and I think it is his intention to attempt to engraft his proposals onto this vehicle if this vehicle moves forward.

Can you, first of all, share with me your thoughts on his initiative as well as your views with regard to the desirability of attempting to merge these two legislative proposals?

Mr. BERGE. Mr. Snyder is our legislative expert.

Mr. FLORIO. Please.

Mr. BERGE. I defer to Mr. Snyder.

Mr. SNYDER. First of all, Mr. Chairman and members of the committee, we do appreciate very much on behalf of the railroad employees and our retirees, this opportunity here to come before this committee on such an important piece of legislation as H.R. 4338, who now has, I understand, about 50 cosponsors.

I would like to respond to, first of all, the statement from Congressman Coats. If I understood the statement correct, they had \$71 million surplus on unemployment benefits.

Well, the way our system operates, it should be that way, because you have incorporated in unemployment benefits extended coverage for older seniority people with 15 years, or beyond 15 years service, and had to cover this, so I don't think it is out of line completely, or all that much of a surplus there that we could talk about and change somewhat the legislation here.

Mr. FLORIO. Mr. Snyder, are you saying that degree of a surplus, that amount of a surplus, is required to have an actuarially sound fund because of reasonably anticipated payments as a result of anticipated unemployment?

Mr. SNYDER. Yes, that is our understanding, because the triggers that are built in under 59 amendments, where you have additional coverage there, additional benefits, weekly benefits, with 10 or more years service, or 15 years.

These people get laid off, and that is happening in some parts of the country.

Mr. FLORIO. Can I ask Mr. Berge, in his capacity as a member of the Railroad Retirement Board, if there are actuarial studies or tables or somehow costed out? What is an appropriate surplus to maintain?

Mr. BERGE. I am not certain, Mr. Chairman. I am not a member of the Board. I am a chairman of the RLEA railroad retirement committee, but I do work closely with the Board.

Mr. SNYDER. We can get that information.

Mr. BERGE. It would be difficult for the Board to do that, although they project unemployment figures, and what the unemployment costs will be to the best of the chief actuary's ability.

How accurate those projections are, of course, is difficult to say.

Mr. FLORIO. I misspoke. You are here with the Board so frequently, I gave you a promotion, and the representation of the administration that you were part of the administration caused me to give you a different title than is appropriate.

But I would think, and I would hope, that in anticipation of the legitimate questions than not only Mr. Coats but others may ask, that that would be something that would be developed so as to be able to respond to questions that he or others may ask for, but I am sorry, please proceed Mr. Snyder.

Mr. SNYDER. For the record, Mr. Chairman, we go back to this committee, headed by Mr. Berge here, agreed on, worked out after a study that was set up by the Congress, the 1983 amendment said to set up a study on the RUIA situation, which a study was made in July of the following year, in 1984, and this was submitted to the Congress, with certain recommendations.

Legislation was drawn up along the line which parties had agreed to and, of course, this had been tossed around and we run into problems with the Ways and Means Committee, as you know, the funding part of it.

But what we have done, there is Senate bill 1968 I believe it is, which is pending in the Senate—been reported by the Senate Labor Committee over there, which has—contains an agreement that was worked out between the carriers and between railroad labor.

However, it had some problems in the Finance Committee, and as you know they are in tax reform. Since then, rail labor has met with the carriers and all to come up with a package along the lines that we had agreed to with some additional amendments there that have been introduced in the past 2 or 3 years, or even longer than that, some changes in the law that is necessary, what we consider minor and things like, that several bills have been introduced by Congressmen here to improve that, or to change that, to make the act much more effective.

So, these was put together and discussed with the carriers at a meeting there, along the lines, to come up with a package to submit to you for your consideration, to incorporate into your bill, so that these things could satisfy the requests of a lot of the other

Congressmen and also get to the RUIA thing which has been delayed so much.

This was met, put together. Such a bill has been proposed, and drafted in Chicago. Your staff has a copy of it. We have a copy of it here that we would like to submit for the record along with the analysis of it.

Now, great parts of it is already agreed to by the carriers but there is some other parts that we have not completely—and we are hoping to sit down in the next few days and resolve these and submit to you an agreed-on package here that would get to RUIA.

Now, we go back to Congressman Coats' bill, while we appreciate his thoughtfulness in trying to help the unemployed people, and I have discussed this with the Congressman, and it kind of puts us in a tough spot here, where you have a piece of legislation that requires a \$10 a day increase in benefits, where ours does not go to that agreed on package because of the big cost of the package, and we have worked that out, and of course we certainly would stick by that and hopefully that carriers would come in with the approval of these amendments so we can get it going.

But the costs and all that is involved that we had with it, so when we make an agreement in trying to work these things out, we try to stick to it, Mr. Chairman, and for that reason we would appreciate—give strong consideration to these amendments that have been well prepared, and hopefully that they will be straightened out where both parties can wholeheartedly support it. Rail labor has already unanimously adopted the package as it is.

But the carriers have it now in somewhat—they are looking at it and will make some recommended changes.

Mr. FLORIO. Mr. Snyder, let me just suggest to you that it would be—everyone would be well advised to arrive at the agreements between labor and management, that they can arrive at it in a very quick fashion in order to utilize moving vehicles for consideration of this proposal.

As you can appreciate, I am sure, if the agreement were not undertaken between the key parties in your discussions with labor, that would provide a very large obstacle for us to move on this—in this area, utilizing moving vehicles within the next short period of time.

So, I would hope that all who are interested in coming to some accommodation do so, and then provide us with the opportunity to review the final agreed to product assuming that it is something that is in the public interest. It might be a very helpful device to strengthen what it is that we are dealing with, the subject of this hearing today.

Mr. SNYDER. Yes.

Mr. FLORIO. So, I thank you very much for that anticipated cooperation, and I will thank the next witness as well for his anticipated cooperation on behalf of those he represents.

Mr. SNYDER. We have, as I say, a copy of the bill and explanation of it.

Mr. FLORIO. We will be pleased to receive that from you.

Mr. SNYDER. All right. Thank you.

[Testimony resumes on p. 103.]

[Information to be furnished follows:]

A BILL

To amend the Railroad Unemployment Insurance Act to assure sufficient resources to pay benefits under that Act, to increase the maximum daily benefit provided under that Act, and to amend the Railroad Retirement Act to ease the restrictions on employment after retirement, to make certain technical corrections, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986."

TITLE I -- FINANCING PROVISIONS

Sec. 101. (a) Section 1(i) of the Railroad Unemployment Insurance Act is amended --

(1) by inserting "(1)" after "(i)";

(2) by striking out "\$300 for any month before July 1, 1954, or in excess of \$350 for any month after June 30, 1954, and before the calendar month next following the month in which this Act was amended in 1959, or in excess of \$400 for any month after the month in which this Act was so amended and before January 1984, or in excess of \$600 for any month after 1983" and inserting in lieu thereof "the monthly compensation base for any month as determined under subdivisions (2) and (3) of this subsection"; and

(3) by adding at the end thereof the following new subdivisions:

"(2) For purposes of subdivision (1) of this subsection the 'monthly compensation base' shall be \$400 for calendar months prior to January 1, 1984, \$600 for calendar months after 1983 and prior to January 1, 1987, and for calendar months after 1986, the amount computed under subdivision (3).

"(3) The monthly compensation base for each calendar year after 1986 shall be \$600 or, if larger, the amount computed pursuant to the following formula:

$B = 600 (1 + \frac{A - 37,800}{56,700})$. For purposes of this formula:

'B' represents the dollar amount of the monthly compensation base, and 'A' represents the amount of the 'applicable base' in respect to Tier I taxes for the calendar year for which the monthly compensation base is being computed, as determined under section 3231(e)(2) of the Internal Revenue Code of 1954. If the monthly compensation base computed under this formula is not a multiple of \$5, it shall be rounded to the nearest multiple of \$5, with such rounding being upward in the event that the amount computed is equidistant between two multiples of \$5."

(b)(1) Section 1(k) of the Railroad Unemployment Insurance Act is amended by striking out "\$1,500;" and inserting in lieu thereof "an amount that is equal to five times the monthly

compensation base for months in such base year as computed under section 1(1) of this Act;"

(2) Section 2(c) of the Railroad Unemployment Insurance Act is amended by striking out "not in excess of \$775 in any month shall be taken into account:" and inserting in lieu thereof "shall be taken into account that is not in excess of \$775 in any month prior to 1987 and, in any month in a base year after 1986, is not in excess of an amount that bears the same ratio to \$775 as the monthly compensation base for that year as computed under section 1(1) of this Act bears to \$600:"

(3) Section 4(a-2)(1)(A) of the Railroad Unemployment Insurance Act is amended by striking out "\$1,500" and inserting in lieu thereof "\$3,000" and by striking out the semicolon at the end and inserting in lieu thereof "and before 1987 or, if any part of such compensation is paid in a calendar year after 1986, not less than an amount that is equal to five times the monthly compensation base for months in such calendar year, as computed under section 1(1) of this Act;"

(4) Section 12 of the Railroad Unemployment Insurance Act is amended by adding at the end the following subsection:

"(r) On or before December 1 of 1986 and of each year thereafter, the Board shall compute in accordance with section 1(1) of this Act the monthly compensation base which shall be applicable with respect to months in the next succeeding calendar year, and shall also compute the amounts in section 1(k), section 2(c), section 3, and section 4(a-2)(1)(A) of this Act that are

related to changes in the monthly compensation base. On or before June 1 of 1987 and of each year thereafter, the Board shall compute in accordance with section 2(a)(3) of this Act the maximum daily benefit rate which shall be applicable with respect to days of unemployment or days of sickness in registration periods beginning after June 30 of each such year. Not later than 10 days after each such determination, the Board shall publish notice in the Federal Register and shall notify each employer and employer representative of the amount determined."

(c) Effective Date. The amendments made by this section shall be effective upon enactment.

Sec. 102. (a) Employer Contributions and Experience Rating.

Section 8(a) of the Railroad Unemployment Insurance Act is amended to read as follows:

"(a)(1)(A) General rule. Every employer shall pay a contribution, with respect to having employees in his service, equal to the percentage determined under subparagraph (B), (C) or (D), whichever is applicable, of so much of the compensation paid in any calendar month by such employer to any employee as is not in excess of the monthly compensation base for that month as computed under section 1(1) of this Act. If compensation is paid to an employee by more than one employer in any calendar month, the contributions required by this subsection shall not apply to any amount of the aggregate compensation paid to such employee by all such employers in such calendar month which is in excess of

such monthly compensation base, and each employer (other than a subordinate unit of a national-railway-labor-organization employer) shall be liable for that portion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him to such employee bears to the total compensation paid in such month by all such employers to such employee. In the event that the compensation paid by such employers to the employee in such month is less than such monthly compensation base, each subordinate unit of a national-railway-labor-organization employer shall be liable for such portion of any additional contribution as the compensation paid by such employer to such employee in such month bears to the total compensation paid by all such employers to such employee in such month.

"(B) Transitional contributions. With respect to compensation paid in calendar months prior to the end of the first full calendar year following the date of enactment of the Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986, the contribution rate shall be 8 percent. With respect to compensation paid in calendar months in the next calendar year, the contribution rate shall be the smaller of 12 percent or the percentage computed pursuant to the following formula:

$R = \frac{2A + B}{3}$. With respect to compensation paid in calendar months months in the third full calendar year following such date of enactment, the contribution rate shall be the smaller of 12 percent or the percentage computed pursuant to the following formula: $R = \frac{A + 2C}{3}$. For purposes of these formulae, R

represents the applicable contribution rate expressed as a percentage for months in the calendar year, A represents the contribution rate determined under the first sentence of this subparagraph, B represents the percentage rate for the employer as determined under subparagraph (C) for the second full calendar year following the date of enactment of the Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986, and C represents the percentage rate for the employer as determined under subparagraph (C) for the third full calendar year following such date of enactment. For purposes of computing B and C, (i) the percentage rate computed under subparagraph (C), if more than 12 percent, shall not be reduced to 12 percent; and (ii) any computations which under subparagraph (C) are to be made on the basis of a 4-quarter or a 12-quarter period ending on a given June 30 shall be made on the basis of a period commencing with the first day of the first calendar quarter following enactment of the Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986, and ending on that June 30, and the amount so computed shall be increased to an amount that bears the same ratio to the amount so computed as 4 or 12 bears to the number of calendar quarters in the period on which the computation was based.

"(C) Experience-rated contributions. With respect to compensation paid in calendar months in a calendar year that commences after the expiration of three full calendar years

following enactment of the Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986, the contribution rate for each employer shall be determined as follows:

"(i) STEP 1.-- The employer's benefit ratio as of the preceding June 30 shall be computed to four decimal points in accordance with subdivision (2) of this subsection.

"(ii) STEP 2.-- The employer's reserve ratio as of the preceding June 30 as computed to four decimal points in accordance with subdivision (4) of this subsection shall be subtracted from the ratio arrived at under step 1.

"(iii) STEP 3.-- The pooled credit ratio for the calendar year, if any, as computed to four decimal points in accordance with subdivision (12) of this subsection shall be subtracted from the ratio arrived at under step 2.

"(iv) STEP 4.-- The total arrived at under step 3 shall be multiplied by 100 so as to obtain a percentage rate, which shall be rounded to the nearest 100th of 1 percent. If the total arrived at under step 3 is 0 or less than 0, the percentage rate as so computed shall be 0.

"(v) STEP 5.-- 0.65 shall be added to the percentage rate arrived at under step 4, representing the portion of the employer's contribution which is to be deposited to the credit of the fund under subsection (1).

"(vi) STEP 6.-- Unless a surtax is in effect with respect to such calendar year under section 3321(c)(1)(B) of the Internal Revenue Code of 1954, the surcharge rate for calendar year, if any, as computed in accordance with subdivision (14) shall be added to the percentage arrived at under step 5.

"(vii) STEP 7.-- The pooled charge ratio for the calendar year, if any, as computed to 4 decimal points in accordance with subdivision (13) shall be multiplied by 100, and the amount so computed shall be added to the percentage rate arrived at under step 6.

"(viii) STEP 8.-- The percentage rate arrived at after the application of steps 5, 6, and 7 shall be the contribution rate applicable to the employer in the following calendar year; except that, if the total is in excess of 12 percent, the contribution rate shall be reduced to 12 percent.

"(D) New-employer contribution rates. Notwithstanding the provisions of subparagraphs (B) and (C), the contribution rate applicable to a new employer who does not become subject to this Act until after the enactment of the Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986 shall be determined as follows:

"(1) With respect to compensation paid in calendar months prior to the end of the first full calendar year in which the employer is subject to this Act, the contribution rate shall be the average contribution rate paid by all employers during the

three calendar years preceding the calendar year before the calendar year in which the compensation is paid. The average contribution rate shall be determined (I) by dividing the aggregate contributions paid by all employers under this subsection in those three calendar years by the aggregate compensation with respect to which such contributions were paid, and (II) by multiplying the resulting ratio as computed to four decimal points by 100.

"(ii) With respect to compensation paid in calendar months in the next calendar year, the contribution rate shall be the smaller of 12 percent or the percentage rate computed pursuant to the following formula: $R = \frac{2(A2) + B}{3}$

"(iii) With respect to compensation paid in calendar months in the third full calendar year in which the employer is subject to the coverage of this Act, the contribution rate shall be the smaller of 12 percent or the percentage rate computed pursuant to the following formula: $R = \frac{A3 + 2C}{3}$. With respect to all calendar months in calendar years subsequent to that calendar year, the contribution rate shall be determined under subparagraph (C).

"(iv) For purposes of the formulae in clauses, (ii) and (iii), P represents the applicable contribution rate expressed as a percentage for months in the calendar year; A1 represents the contribution rate determined under clause (i) for such employer's first full calendar year; A2 represents the contribution rate which would have been determined under clause (i) if the employer's second calendar year had been its first full calendar

year; A3 represents the contribution rate which would have been determined under clause (i) if the employer's third calendar year had been its first full calendar year; B represents the contribution rate for the employer as determined under subparagraph (C) for the employer's second full calendar year; and C represents the contribution rate for the employer as determined under subparagraph (C) for the employer's third full calendar year. For purposes of computing B and C, (I) the percentage rate computed under subparagraph (C), if more than 12 percent, shall not be reduced to 12 percent, and (II) any computations which under subdivision (C) are to be made on the basis of a 4-quarter or 12-quarter period ending on a given June 30 shall be made on the basis of a period commencing with the first day of the first calendar quarter following the date on which the employer first commenced paying compensation subject to this Act and ending on that June 30, and the amount so computed shall be increased to an amount that bears the same ratio to the amount so computed as 4 or 12 bears to the number of calendar quarters in the period on which the computation was based.

"(2) Benefit ratio. An employer's benefit ratio as of any given June 30 shall be determined by dividing all benefits charged to the employer under subdivision (15) of this subsection during the 12 calendar quarters ending on such June 30 by the employer's three-year compensation base as of such June 30 as computed in accordance with subdivision (3) of this subsection.

"(3) Three-year compensation base. An employer's three-year compensation base as of any given June 30 is the aggregate compensation with respect to which contributions were paid by the employer under this subsection in the 12 calendar quarters ending on such June 30.

"(4) Reserve ratio. An employer's reserve ratio as of any given June 30 shall be computed by dividing the employer's reserve balance as of such June 30, as computed in accordance with subdivision (6) of this subsection, by that employer's one-year compensation base as of such June 30, as computed in accordance with subdivision (5) of this subsection. The employer's reserve ratio may be either a positive or a negative figure, depending upon whether the employer's reserve balance is a positive or negative figure.

"(5) One-year compensation base. An employer's one-year compensation base as of any given June 30 is the aggregate compensation with respect to which contributions were paid by the employer under this subsection in the four calendar quarters ending on such June 30.

"(6) Reserve balance. An employer's reserve balance as of any given June 30 shall be determined by subtracting the employer's cumulative benefit balance as of such June 30, computed in accordance with subdivision (7) of this subsection, from the employer's net cumulative contribution balance as of such June 30, computed in accordance with subdivision (8) of this subsection. An employer's reserve balance may be either positive

or negative, depending upon whether or not that employer's net cumulative contribution balance exceeds the employer's cumulative benefit balance.

"(7) Cumulative benefit balance. An employer's cumulative benefit balance as of any given June 30 shall be determined by adding (i) the net amount of the benefits charged to the employer in accordance with subdivision (15) of this subsection on or after the first day of the first calendar quarter after the date of enactment of the Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986, up to and including such June 30, and (ii) the cumulative amount of the employer's unallocated charges for the same period, if any, as computed in accordance with subdivision (9) of this subsection.

"(8) Net cumulative contribution balance. An employer's net cumulative contribution balance as of any given June 30 shall be determined as follows:

"(i) STEP 1.-- The sum of (I) all contributions paid by the employer pursuant to this subsection, (II) all taxes paid by the employer pursuant to section 3321(c)(1)(B) of the Internal Revenue Code of 1954 and (III) any taxes paid by the employer pursuant to section 3321(c)(1)(A) of the Internal Revenue Code of 1954 (after the outstanding balance of loans made under section 10(d) of this Act prior to October 1, 1985, plus interest, have

been paid) on or after the first day of the first calendar quarter after the date of the enactment of the Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986, up to and including such June 30, shall be computed.

"(ii) STFP 2.-- An amount equal to the amount of such contributions deposited to the credit of the fund under subsection (i) of this section shall be subtracted from the amount arrived at under step 1.

"(iii) STEP 3.-- An amount equal to the aggregate amount by which such contributions were reduced in prior calendar years as a result of pooled credits, if any, under subdivision (i)(C)(iii) of this subsection shall be added to the amount arrived at under step 2.

"(9) Unallocated charge. An employer's unallocated charge as of any given June 30 is the amount that as of such June 30 bears the same ratio to the system unallocated charge balance, computed in accordance with subdivision (10) of this subsection, as the employer's one-year compensation base, computed in accordance with subdivision (5) of this subsection, bears to the system compensation base computed in accordance with subdivision (11) of this subsection.

"(10) System unallocated charge balance. The system unallocated charge balance as of any given June 30 shall be determined as follows:

"(i) STEP 1.-- The aggregate amount of all interest paid by the account on loans from the Railroad Retirement Account after September 30, 1985, pursuant to section 10(d) of this Act, during the four calendar quarters ending on that June 30 shall be computed.

"(ii) STEP 2.-- The aggregate amount of any additions to the system unallocated charge balance specified in subdivisions (15) and (16) of this subsection during that period shall be added to the amount arrived at under step 1.

"(iii) STEP 3.-- The aggregate amount of any other expenditures by the account during such period not chargeable to any individual employer under subdivision (15) of this subsection or to the fund under section 11 of this Act shall be added to the amount arrived at under step 2.

"(iv) Step 4.-- The aggregate amount of all income to the account, under section 10(a)(iv) or section 10(a)(vii) of this Act, during that period shall be subtracted from the amount arrived at under step 3.

"(v) STEP 5.-- The aggregate amount of all transfers to the account, pursuant to section 11(d) of this Act, during that period shall be subtracted from the amount arrived at under step 4.

"(vi) STEP 6.-- The aggregate amount of all other income and receipts of the account, during that period, which are not assigned to individual employer balances shall be subtracted from the amount arrived at under step 5.

"(vii) STEP 7.-- The net cumulative contribution balance of each employer whose balance has been canceled pursuant to subdivision (16) of this subsection, during that period, calculated as of the date of such cancellation, shall be subtracted from the amount arrived at under step 6.

"(11) System compensation base. The system compensation base as of any given June 30 shall be determined by adding together the amounts of the one-year compensation bases of all employers and employee representatives subject to this Act, computed in accordance with subdivision (5) of this subsection, as of such June 30.

"(12) Pooled credit ratio. The pooled credit ratio, if any, for a calendar year shall be determined as follows:

"(i) STEP 1.-- The balance to the credit of the account as of the close of business on the preceding June 30, including any amounts in the account attributable to loans made to the account under section 10(d) of this Act prior to October 1, 1985, but disregarding the obligation of the account to repay such loans and interest thereon, shall be computed. There will be a pooled credit ratio for the calendar year only if that balance is in excess of the greater of \$250,000,000 or of the amount that bears the same ratio to \$250,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of the first June 30 which occurs more than twelve calendar months after the date of the enactment of the Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986, as computed in accordance with subdivision (11) of this subsection.

"(11) STEP 2.-- If there is such an excess amount as determined under step 1, it shall be divided by the system compensation base as of the June 30 preceding the calendar year. The result shall be the pooled credit ratio for the calendar year.

"(13) Pooled charge ratio. The pooled charge ratio, if any, for a calendar year shall be determined as follows:

"(A) STEP 1.-- With respect to each employer whose contribution rate for that calendar year as computed through step 6 of paragraph (1)(C) was greater than 12 percent, the employer's 1-year compensation base as of the preceding June 30, as computed in accordance with paragraph (5), shall be multiplied by the difference between--

"(1) the percentage rate as computed through step 6 of subdivision (1)(C); and

"(12) 12 percent.

"(B) STEP 2.-- The amounts arrived at under step 1 for all such employers shall be added so as to obtain an aggregate amount for all such employers.

"(C) STEP 3.-- For each employer whose contribution rate as computed under steps 1, 2, and 3 of subdivision (1)(C) was less than zero, the percentage rate by which such employer's rate was raised in order to bring the employer's rate to zero shall be multiplied by the employer's one-year compensation base as of the

preceding June 30. The amounts computed under the preceding sentence for all such employers shall be added, and the total so computed shall be subtracted from the amount arrived at under step 2.

"(D) STEP 4.-- The aggregate amount arrived at under step 3 shall be divided by the system compensation base for all employers as of the preceding June 30 as computed under subdivision (11), minus the one-year compensation base of those employers whose rates computed through step 6 of subdivision (1)(C) exceeded 12 percent. The result is the pooled charge ratio for the calendar year.

"(14) SURCHARGE RATE.-- The surcharge rate for a calendar year, if any, shall be determined as follows:

"(1) STEP 1.-- The balance to the credit of the account as of the close of business on the preceding June 30, including any amounts in the account attributable to loans made to the account under section 10(d) of this Act prior to October 1, 1985, but disregarding the obligation of the account to repay such loans and interest thereon, shall be computed. There will be a surcharge rate for the calendar year only if such balance is less than the greater of \$100,000,000 or of the amount which bears the same ratio to \$100,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of the first June 30 which occurs more than twelve calendar months after the date of the enactment of the Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986, as computed in accordance with subdivision (11) of this subsection.

"(11) STEP 2.-- If the balance to the credit of the account is less than the greater of the amounts referred to in the second sentence of step 1 but is equal to or greater than the greater of \$50,000,000 or the amount which bears the same ratio to \$50,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of the first June 30 which occurs more than twelve calendar months after the date of enactment of the Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986, the surcharge rate for the calendar year shall be 1.5 percent. If the balance to the credit of the account is less than the greater of the amounts referred to in the preceding sentence, the surcharge rate for the calendar year shall be 2.5 percent.

"(15) Chargeable benefits. Commencing the first day of the first calendar quarter after enactment of the Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986, all benefits paid to an employee for days of unemployment or days of sickness shall be charged to that employee's base year employer by adding amounts equal to the amounts of such benefits to the employer's cumulative benefit balance; except that benefits paid by reason of strikes or work stoppages growing out of labor disputes shall not be added to the employer's cumulative benefit balance but instead shall be added to the system unallocated charge balance, and a sum equal to each amount

realized in recovery for overpayment, erroneous payment or reimbursement of benefits and credited to the account pursuant to section 10(a)(v) or 10(a)(viii) of this Act shall be subtracted from the cumulative benefit balances of the employers of the employees to whom such an amount was paid as a benefit in the proportion to the amount by which each such employer's cumulative benefit balance was increased as a result of the payment of the benefit. All benefits paid to an employee who had more than one base-year employer shall be charged to the cumulative benefit balances of the employee's base year employers (A) in reverse chronological order of the employee's employment with each such employer in the base year if the employer at the time of the claim was the last base year employer, and the amount charged to each employer shall not exceed the compensation paid by the employer to the employee in the base year, and (B) in all other cases, in the same ratio as the compensation paid to such employee by the employer bears the total of such compensation paid to such employee by all such employers in the base year. All benefits chargeable under the preceding sentence to an employer for which the Board has canceled balances under subdivision (16) of this subsection shall be added to the system unallocated charge balance.

"(16) Defunct employer. Whenever the Board determines, pursuant to such regulations as the Board may prescribe, that an employer has permanently ceased to pay compensation with respect to which contributions are payable pursuant to this subsection, the Board shall, effective the date of the Board's determination, transfer the employer's net cumulative contribution balance as a subtraction from, and cumulative benefit balance as an addition to, the system unallocated charge balance, and cancel all other accumulations of the employer.

"(17) Individual employer record. As of the first day of the first calendar quarter beginning after the date of enactment of the Railroad Unemployment Insurance and Railroad Retirement Amendments of 1986, the Board shall commence maintaining an individual employer record with respect to each employer, and the records necessary to determine pooled charges, pooled credits and unallocated charge balances for the system. Whenever a new employer begins paying compensation with respect to which contributions are payable pursuant to this subsection, the Board shall establish and maintain an individual employer record for such employer. The term 'individual employer record' means an individual employer's benefit ratio, reserve ratio, one-year compensation base, three-year compensation base, unallocated charge, reserve balance, net cumulative contribution balance, and cumulative benefit balance.

"(18) Joint employer records. Pursuant to regulations prescribed by the Board, the Board may allow two or more employers, upon application, to establish and maintain, or to discontinue, a joint individual employer record for such employers as though such joint record constituted a single employer's individual employer record.

"(19) Mergers, consolidations or other changes in employer identity. (A) In the event of a merger, consolidation, unification, or reorganization in which an employer combines with another employer and the combination entails no partitioning of the property of the employer, the individual employer records of the two employers shall be combined into a joint individual employer record if the parties request such joint treatment pursuant to subdivision (18) of this subsection or if the Board otherwise determines, pursuant to regulations prescribed by the Board, that such joint treatment is desirable.

"(B) In the event of a merger, consolidation, unification, or reorganization in which an employer combines with another entity that is not an employer, the employer's individual employer record shall attach to the combined entity.

"(C) In the event property of an employer is sold or transferred to another employer or other entity, or is partitioned among two or more employers or entities, the cumulative benefit balance, net cumulative contribution balance,

one-year compensation base, and three-year compensation base of the employer shall be prorated among the employers which receive the property, including any entities which become employers by virtue of such transfer or partition, in such equitable manner as the Board by regulation shall prescribe.

"(D) The cumulative benefit balance, net cumulative contribution balance, one-year compensation base, and three-year compensation base of an employer that reincorporates or otherwise alters its corporate identity in a transaction not involving a merger, consolidation, or unification shall attach to the reincorporated or altered entity.

"(F) If an employer abandons property or discontinues service but continues to operate as an employer, the employer's individual employer record shall continue to be calculated as provided in this subsection without retroactive adjustment."

(b) Section 8(b) of the Railroad Unemployment Insurance Act is amended to read as follows:

"(b) Each employee representative shall pay a contribution with respect to so much of the compensation paid to him for services performed as an employee representative as is not in excess of the monthly compensation base computed in accordance with section 1(1) of this Act, at a rate which shall be determined under subsection (a) of this section in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in this Act."

(c) Section 8(f) of the Railroad Unemployment Insurance Act is amended by striking out "0.5" and inserting in lieu thereof "0.65".

(d) Section 8(h) of the Railroad Unemployment Insurance Act is amended by inserting at the end thereof the following:
 "The remedies under the first sentence of an employer or employee representative who contests the amount of contributions payable by him shall include, and extend to, a contention that the contribution rate determined by the Board under subsections (a) or (b) of this section to be applicable to such employer or employee representative is inaccurate or otherwise improper."

(e) Section 8 of the Railroad Unemployment Insurance Act is further amended by redesignating subsections (c) through (h) as subsections (f) through (k), respectively, and by inserting after subsection (b) the following new subsections:

"(c) Not later than October 15 of 1987 and of each year thereafter, the Board shall proclaim the balance to the credit of the account as of the preceding June 30 for purposes of subdivisions (12) and (14) of subsection (a) of this section, the balance of any advances to the account under section 10(d) of this Act after September 30, 1985, which has not been repaid with interest as provided in such section as of September 30 of that year, the system compensation base as of that June 30 as computed in accordance with subdivision (11) of that subsection, the system unallocated charge balance as of that June 30, as computed

in accordance with subdivision (10) of that subsection, and the pooled credit ratio, pooled charge ratio and surcharge rate, if any, as determined under subdivision (12), (13) or (14) of that subsection and applicable in the following calendar year. As soon as is practicable thereafter, the Board shall publish notice in the Federal Register of the amounts so determined and proclaimed.

"(d) Not later than the last day of any calendar quarter, the Board shall notify each employer and employee representative of its net cumulative contribution balance and cumulative benefit balance as of the end of the preceding calendar quarter, as computed in accordance with subdivisions (7) and (8) of subsection (a) of this section as of the last day of such preceding calendar quarter rather than as of a given June 30 if such last day is not a June 30. Not later than October 15 of 1987 and of each year thereafter, the Board shall notify each employer and employee representative of its benefit ratio, reserve ratio, one-year compensation base, three-year compensation base, unallocated charge, and reserve balance as of the preceding June 30 as computed in accordance with subdivisions (2), (3), (4), (5), (6), and (9) of subsection (a) of this section, and of the contribution rate applicable to the employer or employee representative in the following calendar year as computed under subdivisions (1) (B), (C) or (D) of that subsection.

"(e) Notwithstanding any other provision of law, upon request by an employer or employee representative, the Board shall make available to such employer or employee representative any information available to the Board which may be necessary to verify the accuracy of a contribution rate determined by the Board to be applicable to such employer or employee representative, or of any component of that contribution rate including the accuracy of the employer's individual employer record, upon payment by such employer or employee representative to the Board of the cost incurred by the Board in making such information available. The amounts so paid to the Board shall be credited to and deposited in the fund."

((f) Effective date. The amendments made by this section shall be effective upon enactment, except that the amendment made by subsection (c) shall be effective with respect to compensation paid on or after January 1, 1987.

Sec. 103. (a) Section 10(a) of the Railroad Unemployment Insurance Act is amended by striking out "0.5" and inserting in lieu thereof "0.65".

(b) The amendment made by this section shall be effective with respect to compensation paid in months after December 31, 1986.

Sec. 104. (a) Section 11(a) of the Railroad Unemployment Insurance Act is amended by striking out "0.5" and inserting in lieu thereof "0.65".

(b) The amendment made by this section shall be effective with respect to compensation paid in months after December 31, 1986.

TITLE II - BENEFIT ADJUSTMENTS

Sec. 201. (a) Section 2(a) of the Railroad Unemployment Insurance Act is amended--

(1) by inserting "(1)" after "(a)";

(2) by striking out "four during any registration period:" in the first sentence and inserting in lieu thereof "seven during the first registration period within a benefit year and for each day of unemployment in excess of four during any subsequent registration period in the same benefit year:";

(3) by striking out the second sentence and inserting in lieu thereof "Benefits shall be payable to any qualified employee for days of sickness after the seventh consecutive day of sickness in a period of continuing sickness, but excluding seven days of sickness in the first registration period in a benefit year and excluding four days of sickness in any subsequent registration period in the same benefit year.";

(4) by inserting "(2)" at the beginning of the second paragraph;

(5) by striking out "and" after "shall not exceed \$24 per day of such unemployment or sickness" in the second paragraph and inserting in lieu thereof a comma;

(6) by inserting "but before July 1, 1986," after June 30, 1976," in the second paragraph;

(7) by striking out the period at the end of the first sentence of the second paragraph and inserting in lieu thereof", that for registration periods beginning after June 30, 1986, but before July 1, 1987, such amount shall not exceed \$27 per day of unemployment or sickness, and that for registration periods beginning after June 30, 1987, such amount shall not exceed the maximum daily benefit rate provided in subdivision (3) of this subsection.";

(8) by inserting after the second paragraph (redesignated as subdivision (2)) the following new subdivision:

"(3) On or before June 1 of 1987 and of each year thereafter the Board shall determine the maximum daily benefit rate which shall be applicable with respect to days of unemployment or days of sickness in registration periods beginning after June 30 of each such year. The maximum daily benefit rate shall be the amount computed pursuant to the following formula, but not less than \$27: $BR = 25(1 + \frac{A - 600}{900})$. For purposes of this formula, 'BR' represents the maximum daily benefit rate, and 'A' represents the amount obtained by dividing the amount of the 'applicable base' in respect of tier I taxes as determined under section 3231(e)(2) of the Internal Revenue Code of 1954 for the calendar year in which the benefit year begins by 60, with this quotient being rounded down to the nearest \$100. If the maximum daily benefit rate computed under this formula is not a multiple of \$1, it shall be rounded to the nearest multiple of \$1, with such rounding being upward in the event the amount computed is equidistant between two multiples of \$1."; and

(9) by inserting "(4)" at the beginning of the last paragraph.

(b) The amendments made by paragraphs (2) and (3) of subsection (a) shall be effective with respect to registration periods beginning after June 30, 1986. The amendments made by the remaining paragraphs of subsection (a) shall be effective upon enactment.

Sec. 202. (a) Section 3 of the Railroad Unemployment Insurance Act is amended to read as follows:

"QUALIFIED EMPLOYEE"

"An employee shall be a 'qualified employee' if the Board finds that he will have had compensation with respect to each of not less than six months in the base year and that his compensation in the base year (excluding earnings in any month in excess of the monthly compensation base as provided in section 1(1) of this Act with respect to the base year) will not have been less than an amount equal to five times the monthly compensation base as provided in section 1(1) of this Act with respect to the base year."

(b) The amendment made by this section shall be effective with respect to base years after 1986.

Sec. 203. (a) Section 1(k) of the Railroad Unemployment Insurance Act is amended in the second paragraph thereof by striking "\$10" and inserting in lieu thereof "\$15".

(b) The amendment made by this section shall be effective July 1, 1986.

TITLE III--MISCELLANEOUS PROVISIONS

Sec. 301. (a) Section 5(b) of the Railroad Unemployment Insurance Act is amended by adding at the end thereof the following:

"When an application for benefits is filed with the Board, the Board shall provide notice of such application to the claimant's base-year employer or employers and afford such employer or employers an opportunity to submit information relevant to the application before making an initial determination with respect to the application. When the Board initially determines to pay benefits to a claimant under this Act, the Board shall provide notice of such determination to the claimant's base-year employer or employers.".

(b) Section 5(c) of the Railroad Unemployment Insurance Act is amended--

(1) by inserting at the end of the first paragraph the following: "In any such case, the Board or the person or reviewing body so established or assigned shall, by publication or otherwise, notify all parties properly interested of their right to participate in the hearing and of the time and place of the hearing.";

(2) by inserting after the second paragraph the following paragraph:

"Any base-year employer of a claimant whose claim for benefits has been granted in whole or in part, either in an initial determination with respect thereto or in a determination after a hearing pursuant to the first paragraph of this subsection, and who contends that the determination is erroneous for a reason or reasons other than one that is reviewable under the fourth paragraph of this subsection, may appeal to the Board for the review of such determination. Despite such an appeal, the benefits awarded shall be paid to such claimant, subject to recovery by the Board if and to the extent found on the appeal to have been erroneously awarded. The Board shall take such action as is appropriate to recover the amount of such benefits including if feasible adjustment in subsequent payments pursuant to the first two paragraphs of section 2(d) of this Act. Upon an appeal, the Board shall review the determination appealed from and for such review may designate one of its officers or employees to receive evidence and report to the Board thereof together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal."

(3) by striking out "two" in the first sentence of the fifth paragraph (after insertion of the foregoing paragraph) and inserting in lieu thereof "three"; and

(4) by inserting before the final paragraph the following paragraph:

"For purposes of his subsection and subsections (d) and (f) of this section, any base-year employer of the claimant is a properly interested party."

(c) Section 5(f) of the Railroad Unemployment Insurance Act is amended--

(1) by inserting after "member," in the first sentence "or any base-year employer of the claimant,"; and

(2) by inserting after the second sentence the following:

"A copy of such petition also shall forthwith be served upon any other properly interested party, and such party shall be a party to the review proceeding."

(d) Section 12(d) of the Railroad Unemployment Insurance Act is amended--

(1) by striking out "and" where it appears before "(iii)"; and

(2) by striking out the period at the end of the first sentence and inserting in lieu thereof the following: "; and (iv) the Board shall disclose to any base-year employer of a claimant for benefits any information, including information as to the claimant's identity, that is necessary or appropriate to notify such employer of the claim for benefits or to allow full and fair participation by such employer in an appeal, hearing or other proceeding relative to the claim pursuant to section 5 of this Act."

(e) Section 12(n) of the Railroad Unemployment Insurance Act is amended by striking out "court" in the proviso to the second paragraph.

(f) The amendments made by this section shall be effective upon enactment.

TITLE IV -- PETIEMENT ACT PROVISIONS

Sec. 401. (a) Section 1(o) of the Railroad Retirement Act of 1974 is amended by striking out "if, after completing twenty-five" and all that follows through "service." and inserting in lieu thereof "after completing twenty-five years of service."

(b) The amendment made by this section shall be effective with respect to annuities accruing for months beginning after the date of enactment of this Act, but it shall not be effective in the case of any survivor of an employee where, prior to the date of enactment, benefits had been awarded under title II of the Social Security Act to a survivor of the employee based in whole or in part on service as an employee to an employer covered under the Railroad Retirement Act.

Sec. 402. (a) Section 2(e) of the Railroad Retirement Act of 1974 is amended--

(1) by striking out subdivisions (1) and (2) and redesignating subdivisions (3), (4), and (5) as subdivisions (1), (2), and (3);

(2) in subdivision (1), as so redesignated, by striking out "to an employer or to the last person, or persons, by whom he was employed prior to the date on which the annuity under subsection (a)(1) of this section began to accrue" and inserting in lieu thereof "to an employer (as defined in section 1(a))"; and

(3) in subdivision (2), as so redesignated, by striking out "subdivision (3)" each place it appears and inserting in lieu thereof "subdivision (1)".

(b) Section 2(f) of such Act is amended by adding at the end thereof the following new subdivision:

"(6) That portion of the annuity for any month of an individual as is computed under section 3(b) and of a spouse as is computed under section 4(b) shall each be subject to a deduction of \$1 for each \$2 of compensation received by such individual from compensated service rendered in such month to the last person or persons by whom such individual was employed prior to the date on which the annuity of such individual under subsection (a)(1) began to accrue, and that portion of the annuity for any month of a spouse as is computed under section 4(b) shall be subject to a deduction of \$1 for each \$2 of compensation received by such spouse from compensated service rendered in such month to the last person or persons by whom such spouse was employed prior to the date on which the annuity of

such spouse under subsection (c)(1) began to accrue: Provided, however, That any deductions imposed by this subdivision for any month shall not exceed 50 per centum of the annuity amount for such month to which such deductions apply."

(c) The amendments made by this section shall apply to annuities payable under the Railroad Retirement Act of 1974 for months beginning after the date of the enactment of this Act.

Sec. 403. (a) Section 2(e)(2) of the Railroad Retirement Act, as redesignated by section 402 of this Act, is amended--

(1) by striking out "\$200 in earnings" and inserting in lieu thereof "\$400 in earnings (after deduction of disability related work expenses)";

(2), by striking out "\$2400" each place it appears and inserting in lieu thereof "\$4800 (after deduction of disability related work expenses)";

(3) by striking out "\$200" each place it appears and inserting in lieu thereof "\$400"; and

(4) by striking out "\$100" and inserting "\$200" in lieu thereof.

Sec. 2 The amendments made by this Act shall apply with respect to months in calendar years beginning after the date of the enactment of this Act.

Sec. 404. (a) Section 3(g)(1) of the Railroad Retirement Act of 1974 is amended by adding at the end thereof the following new sentence: "Any increase under this subsection shall not be prevented from taking effect by any provision of law other than this Act and the portion of the annuity shall not be reduced by any provision of law other than this Act."

(b) Section 4(d)(1) of the Railroad Retirement Act of 1974 is amended by adding at the end thereof the following new sentence: "Any increase under this subsection shall not be prevented from taking effect by any provision of law other than this Act and the portion of the annuity shall not be reduced by any provision of law other than this Act."

(c) Section 4(g)(6) of the Railroad Retirement Act of 1974 is amended by adding at the end thereof the following new sentence: "Any increase under this subsection shall not be prevented from taking effect by any provision of law other than this Act and the portion of the annuity shall not be reduced by any provision of law other than ³this Act."

(d) The amendments made by this section shall take effect as of December 12, 1985.

Sec. 405(a) Section 11(g)(2) of the Railroad Retirement Act of 1974 is amended by adding at the end thereof the following:

"For purposes of subsection (g)(2) of this Act, the period June 15, 1948, through December 31, 1948, shall be deemed to be a war service period with respect to any individual who without intervening employment was employed by the railroad service as an employee in an activity which was determined to be a war activity following such period."

(b) The amendment made by this Act shall apply with respect to annuities accruing in months beginning after the date of enactment of this Act.

Section 406. (a) Section 4 of the Railroad Retirement Act of 1974 is amended by adding at the end thereof the following new subsection:

"(j) For purposes of computing the annuity amounts provided under subsections (a) and (f) of this section a spouse or survivor of an employee whose service performed outside the United States was creditable under this Act shall be deemed to meet the residency requirement imposed under section 202(t)(11) of the Social Security Act."

(b) The amendment made by this section shall apply with respect to annuities accruing in months beginning after the date of enactment of this Act.

EXPLANATION OF THE BILL

TITLE I - FINANCING PROVISIONS

Section 101

The Railroad Unemployment Insurance Act as currently in effect provides a monthly maximum amount of compensation that is subject to contributions to support the system and that is used in determining eligibility for and certain other aspects of benefit payments under the Act. The amount, which is now \$600 per month, may be changed only by amending the Act and thus, is not subject to automatic adjustments in conformity with increases in wages. The Act provides that the rate of contributions may not exceed eight percent of the monthly maximum amount subject to contributions. Therefore, over time the capability of the system to collect revenues necessary to pay benefits is eroded as wage levels rise.

Section 101 of the bill would amend section 1(1) of the Railroad Unemployment Insurance Act to provide that the monthly maximum compensation base would remain at its current level of \$600 through calendar year 1986 and will, thereafter, be indexed to increases in the tier I tax base as applicable under the Railroad Retirement Tax Act. The monthly compensation base

provided in section 1(i) would be utilized for purposes of assessing contributions under section 8 of the Act. Thus, as benefit levels increase because of wage increases, the ability of the system to collect revenues to pay these increased benefits will be preserved.

Section 101 would also make amendments to certain other provisions to conform those provisions to the indexed monthly compensation base and to the more rigorous basic eligibility requirement that would be applied under the amendment to section 3 of the Act as proposed in section 202 of this bill.

Section 1(k) of the Act would be amended to increase from \$1,500 to five times the monthly compensation base the amount of earnings in the base year used in determining whether subsidiary remuneration would constitute remuneration and thus preclude payment of benefits. Section 2(c) of the Act would be amended to index the amount of monthly compensation that may be considered in determining the maximum duration of benefit payments. Section 4(a-2)(1)(A) of the Act would be amended to provide that an employee who voluntarily leaves his work without good cause would be disqualified from benefits until he will have earned compensation of at least five times the compensation base (up from \$1,500 under current law). As amended, section 4(a-2)(1)(A)

would require that an employee must meet the compensation requirement applicable in the year in which he fulfills the requirement. Thus, for example, an employee who voluntarily leaves work in November 1986, returns to work in December and continues to work into 1987 would have to receive compensation of at least five times the indexed monthly compensation base applicable to 1987, not \$3,000 applicable in 1986.

Finally, section 101 would amend section 12 of the Railroad Unemployment Insurance Act to require the Board to compute on an annual basis the monthly compensation base and the other indexed amounts tied to that base, to publish notice of such amounts in the Federal Register, and to notify employers and employee representatives of the amounts for the next calendar year. The new section 12(r) would also require the Board to compute on an annual basis the maximum daily benefit rate applicable for registration periods after June 30, 1987 as provided under section 2(a) as amended by section 201 of this bill.

Section 102

Section 102 would amend section 8 of the Railroad Unemployment Insurance Act to modify the method by which the contribution rate is determined and to provide for indexing of the maximum amount of compensation that is subject to contributions in conformity with the amendment to section 1(1) of the Act as proposed in section 101 of the bill. Under current law the contribution rate is determined by the Board based on the

account balance in the railroad unemployment insurance account, with a maximum rate of eight percent. The bill provides that the contribution rate would remain at eight percent with respect to compensation paid in calendar months prior to the end of the first full calendar year after enactment of the bill, after which the rate of tax imposed on employers would vary in accordance with the "experience rating" of individual employers.

Experience rating, which will ultimately be based on an employer's experience over a three-year period, will be phased in with the rate applicable from the date of enactment until the end of the first full calendar year after enactment being eight percent for all employers. A partially experience-rated rate based on one year's experience will be applicable in the next calendar year with a partially experience-rated rate based on two years' experience applicable in the third full calendar year after enactment.

In the fourth full calendar year after enactment and following years each employer would pay contributions at a rate consisting of a basis rate (which is described below), plus 0.65 percent for the railroad unemployment administration fund, plus the amount of any surcharge applicable in the year. .

The basic rate consists of three elements. The first element is the allocated-experience rate and is based on the allocable benefits and charges for each railroad. Its purpose is to ensure

that each railroad is ultimately responsible for all benefits allocable to it. The second element is the unallocated-experience element which covers benefits and charges which are not allocable to any railroad. Its purpose is to ensure that responsibility for benefits and charges which cannot be specifically allocated to a single railroad is fairly shared. The third component covers risk-shared benefits, i.e., benefits which are allocable, but which, because of the imposition of an overall contribution rate maximum of 12 percent, are not immediately collectable. It is designed to recoup, for the system, the taxes lost by the imposition of the maximum contribution rate. Specifically, it is the difference between what should be collected for the system to keep it in balance, based on prior experience, and what is actually produced by the first two components of the proposed formula. This difference arises because certain employers contribute less than what is specifically required of them, when their developed rate is above the maximum. The difference is then pro-rated among the remaining participating employers on the basis of current annual taxable payroll, again with the rate thereof being subject to the overall maximum rate of 12 percent. Eventually, these amounts would be paid into the system by the railroads that were at the maximum rate, because the reserve-ratio component assures that, over time, each employer will contribute amounts equal to all benefits allocable to it.

In addition to the basic employer railroad unemployment insurance tax rate derived as described above, all employers would be charged the administration-expense tax rate of 0.65 percent.

Finally, the bill provides for the addition of a surcharge rate for a calendar year which rate would be triggered by a small balance in the railroad unemployment insurance account on June 30 of the preceding calendar year. The surcharge would vary from 1.5 percent to 2.5 percent depending on the balance in the account.

The bill provides a maximum rate of 12 percent that may be applied to any given employer.

New employers would transition to experience-based rates over a three-year period. For months prior to the end of the first full year, their rate would be the average experience-based rate for the system for the three year period ending the year before the year in which the compensation subject to contributions is being paid. In the second year, their rate would be a weighted average in which a rate based on their experience-based rate for the system over the past three years counts for two-thirds. In the third year, the new employer's own experience for only one-third. By the fourth year, the new employer's rate would be based entirely upon its own experience.

Finally, section 102 of the bill would amend section 8 of the Railroad Retirement Act to require the Board to make the various computations that will be required under the experience rated contribution system. These computations would have to be made by stated dates and the Board would be required to publish notice of the computations in the Federal Register.

SECTIONS 103 and 104

These sections of the bill would amend sections 10(a) and 11(a) of the Railroad Unemployment Insurance Act to increase the contribution percentage that is earmarked for deposit in the railroad unemployment insurance administration to provide for administrative expenses incurred by the agency in administering the Act. The percentage rate would be increased from 0.5 percent to 0.65 percent.

TITLE II -- BENEFIT ADJUSTMENTS

Section 201

Under current law individuals can receive unemployment or sickness benefits for a maximum of 10 days in each 14-day registration period. Section 201 of the bill would amend section 2(a) of the Railroad Unemployment Insurance Act to provide that in the first registration period in a benefit year benefits shall be payable for a maximum of seven days, thus in effect, imposing an initial seven-day waiting period for unemployment and sickness benefits similar to that applicable under most state programs.

The seven-day waiting period must be separately satisfied for both unemployment and sickness benefits, so if an employee has claimed unemployment benefits in a given benefit year and satisfied the waiting period for such benefits and thereafter claims sickness benefits in the same year, he must satisfy a new seven-day waiting period for sickness benefits.

Section 201 would also amend section 2(a) of the Railroad Unemployment Insurance Act to provide for an increase in the maximum daily benefit rate from \$25 to \$27 effective for registration periods beginning after June 30, 1986, and prior to July 1, 1987, and for indexing of the maximum daily benefit rate for subsequent benefit years. The maximum daily benefit rate for benefit years after June 30, 1987, will be indexed on a yearly basis to increases in wages as reflected in the increases in the maximum compensation base provided for tier I taxes under the Railroad Retirement Tax Act.

The current maximum daily benefit rate of \$25 has been in effect and unchanged since July 1, 1976, despite substantial increases in wages in the railroad industry. The maximum amount of benefits in a two-week registration period of \$250 is lower than that provided in nearly all state programs and an increase in this rate is warranted. In addition, the provision indexing the maximum daily benefit rate will provide for increases in the benefit rate in much the same way and at similar intervals as the contribution base is increased under the amendment proposed in section 101 of this bill.

Section 202

Section 202 of the bill would make the base year employment requirements for benefit eligibility more strenuous than under current law. Current law provides that an employee may be eligible for benefits if in the base year he had at least \$1,500 in compensation counting no more than \$600 in any month, and if the employee had no compensation prior to the base year, that he have had compensation in not less than five months in that year. Section 202 would amend section 3 of the Act to require that an employee have received compensation in at least six months in the base year and have had compensation in the base year of at least five times the amount of the monthly compensation base for the base year as provided under section 1(i) as would be amended by section 101 of the bill. This amendment would be effective with respect to base years beginning after base year 1986. Thus, for example an employee applying for benefits in benefit year 1988, which begins on July 1, 1988, would have to have had compensation in calendar year 1987 (base year) in at least six months of that year and have received at least five times the compensation base applicable in the base year.

Section 203

Section 203 of the bill would amend section 1(k) of the Railroad Unemployment Insurance Act to raise from \$10.00 to \$15.00 the amount of earnings considered to be "subsidiary remuneration." An individual's earnings, if below the amount

specified as "subsidiary remuneration" in section 1(k) and if earned in performance of work which is less than full-time and is not inconsistent with the employee being able to hold other full-time employment, is not considered to be "remuneration" under the Act, unless "subsidiary remuneration" earned in the base year was needed to qualify the individual for benefits. Thus, an unemployed railroad worker could, under the proposed amendment, earn up to \$15.00 on a given day without adversely affecting his entitlement to unemployment benefits. The \$10.00 amount currently specified in section 1(k) of the Act has not changed since 1975 and an increase to \$15.00 is warranted based on wage increases that have occurred since that time.

TITLE III -- MISCELLANEOUS PROVISIONS

Section 301

Section 201 of the bill would provide for implementation of an experience rating system for the railroad unemployment insurance program. Under an experience rating system, the rate of tax imposed on each employer depends on the unemployment benefit payments made to employees of the employer. Employers currently have no right to question or appeal unemployment benefit claims filed by their employees and, accordingly, have no way of challenging claims that they feel should not have been paid, and, thereby, improve their experience rating.

Section 301 of the bill would amend section 5 of the Railroad Unemployment Insurance Act to provide for notifying an employee's base year employer or employers when the employee claims benefits

and when the employee is awarded benefits and to afford the base year employer the right to appeal the award administratively and ultimately to the courts. The filing of an appeal by a base year employer would not suspend the award of benefits or effect the payment of those benefits, but, if successful, would render the payments previously made erroneous and subject to recovery under section 2(d) of the Act.

TITLE IV-RETIREMENT ACT PROVISIONS

Section 401

Section 401 would amend the definition in section 1(o) of the Railroad Retirement Act of the term "current connection with the railroad industry" so that an individual who has completed 25 years of railroad service would be deemed to have a current connection with the railroad industry for purposes of determining entitlement to a supplemental annuity and for purposes of paying survivor benefits under the Railroad Retirement Act. The Railroad Retirement Act provides that if an employee dies without a current connection with the railroad industry his service and compensation records are to be transferred to the social security system and any survivor benefits would be paid under that system.

Current law provides that for the purposes of entitlement to a supplemental annuity and to survivor benefits only (i.e., not for purposes of entitlement to an occupational disability or to a dual benefit component), an individual who has completed 25 years of railroad service would be deemed to have a current connection if that individual's railroad service was terminated involuntarily

and without fault on his part, and he did not thereafter decline an offer of employment in his class or craft in the railroad industry. This provision has proven somewhat difficult to administer. The proposed amendment would ease this administrative problem while preserving the purpose of the current connection requirement as applicable to career railroad employees.

The proposed amendment would be effective prospectively with respect to survivors so as to avoid the problems that would be encountered where jurisdiction for survivor benefits has already been transferred to the social security system. Responsibility for payment of survivor benefits in such cases would remain with the social security system.

Section 402

Section 402 would amend the Railroad Retirement Act to eliminate the last person service provisions of the Act and to replace the restrictions contained in those provisions with partial work deductions.

The Act presently provides that an employee shall be eligible for an annuity only after he shall have ceased to render compensated service to the person by whom he is employed, whether or not a covered railroad employer, but with the right to engage in other employment to the extent not prohibited by the Act. The Act further provides that no annuity is payable until the employee

has relinquished all "rights to return to the service of an employer and of the person by whom he was last employed," and that no annuity shall be paid for any month in which an employee shall render compensated service for an employer or for the person by whom he was last employed. These restrictions also apply to a spouse or divorced wife.

The bill would eliminate the provision requiring loss of an annuity based upon return to the service of the person by whom the annuitant was last employed (i.e., last person service) and would replace this restriction by partial work deductions; however, the present limit on return to service for a railroad employer would be retained. Under the bill the reduction in the tier I component would be the reduction currently applicable when the service is not last person service. The reduction in the tier 2 component would be one dollar for each two dollars of compensation received in last person service and, like the present provisions, would apply to the annuity of a spouse as well as that of an employee-annuitant. In the case of a spouse, the spouse tier 2 component would be subject to partial work deductions if either the spouse or the employee-annuitant returned to last person service. In any case, however, the work deductions could not operate to reduce the monthly tier 2 annuity of the employee-annuitant or the spouse below 50 percent of the amount they would have received if they had not worked in last person service.

Section 403

Section 403 would amend section 2(e) of the Railroad Retirement Act to increase the earnings limit for persons receiving disability annuities under the Railroad Retirement Act. Section 2(e) presently provides that an employee receiving a disability annuity (whether an occupational disability annuity or a total and permanent disability annuity) who is under age 65 is not entitled to an annuity for any month in which he earns \$200.00 or more (subject to the qualification that the annuity for any such month will be later paid to the employee if it turns out that he earned less than \$2,400.00 for the entire year). This restriction is also applicable to the annuities of spouses and divorced spouses.

The bill would change the restriction to \$400.00 per month and \$4,800.00 per year. Both of these amounts are exclusive of "disability related work expenses." The change in the restriction would apply with respect to months in calendar years beginning after the enactment date.

Section 404

Section 404 of the bill would amend sections 3(g)(1), 4(d)(1), and 4(g)(6) of the Railroad Retirement Act to provide that cost-of-living increases in the tier II components of employee, spouse, and survivor annuities shall not be suspended or reduced

by operation of any law other than the Railroad Retirement Act. The amendments would also prohibit reduction of tier II annuity components by any law other than the Railroad Retirement Act.

The purpose of these amendments is to exempt tier II colas and tier II benefits from the Balanced Budget and Emergency Deficit Control Act of 1985. The amendments would be effective December 12, 1985, so as to allow payment of the tier II colas that would have been first payable on January 1, 1986, but which were suspended and canceled by operation of the Balanced Budget and Emergency Deficit Control Act of 1985.

Section 405

The Railroad Retirement Act of 1974 provides for the crediting of military service in determining an individual's years of service if the military service was performed in a "war service period" and if the individual was employed in the railroad industry in the year he entered military service or the year prior thereto. However, section 3(1)(2) of the Act provides that if the individual entered into the military voluntarily prior to the commencement of a war service period he may not receive credit for his military service during any of the period following his voluntary entry into the military.

The war service period which began September 8, 1939, with the advent of World War II ended pursuant to the Presidential Proclamation of June 14, 1948. A subsequent war service period began on December 16, 1950, in connection with the Korean

Conflict. Individuals who were inducted into the military in this intervening period pursuant to the Selective Service Act of 1948 received credit for their military service, but many other railroad employees who voluntarily enlisted during this period knowing that they would otherwise be drafted do not receive credit for their military service under section 3(i)(2) of the Act as currently in effect. In addition, individuals who entered military service in the period January 1, 1947, through June 14, 1948, may receive credit for such military service only through June 14, 1948, whereas individuals who commenced military service prior to 1947, and who were required to remain in military service after June 14, 1948, may receive credit for military service after June 14, 1948.

The bill would remedy these problems in the case of career railroad employees by amending section 1(g)(2) of the Railroad Retirement Act, which defines the term "war service period," to provide that the period June 15, 1948, to December 15, 1950, shall be deemed to be a "war service period" with respect to an individual who, after he is released from the military, returns to railroad employment without intervening employment for a nonrailroad company or person. By requiring that the railroad employee return to railroad employment following his military service in addition to the requirement that his military service have been preceded by railroad employment, the bill would eliminate the disparate treatment accorded certain individuals

while maintaining the overall intention of section 3(1)(2) to provide credit to career railroad employees whose railroad employment was interrupted by military service.

Section 2 of the bill provides that the amendments would apply to annuities accruing for months after the date of enactment. Thus, military service rendered creditable by the amendments would be creditable in the case of annuitants on the benefit rolls as well as in the case of newly awarded annuities. The amendments would not, however, have any retroactive effect.

Section 406

Section 406 would amend section 4 of the Railroad Retirement Act to make clear that tier I benefits may be paid to the auxiliary and survivor beneficiaries of non-resident employees. The Social Security Amendments of 1983 eliminated benefits for alien spouse and survivor beneficiaries who do not meet a residency test. This provision, if applied literally, would mean that spouse and survivor beneficiaries of nearly all Canadian employees who may never have resided in the United States would fail to meet this condition and thus would not receive a tier I amount. However, the Board has determined that since the Railroad Retirement Act, unlike the Social Security Act, allows crediting of service by non-resident aliens to a railroad employer outside the United States, the period during which such service was performed should be deemed to be service while a resident in the United States and could be used to meet the residency requirement. However, even under this interpretation certain spouses and survivors would not receive tier I benefits. This proposed amendment would restore all such spouses and survivors to the situation they were in prior to the Social Security Amendment of 1983.

Mr. FLORIO. Does the gentleman from New Mexico have any observations?

Mr. RICHARDSON. No, Mr. Chairman. Thank you.

Mr. FLORIO. The gentleman, we know, was unavoidably detained, but he has expressed to me on a number of occasions his interest in this legislation, and his sense of outrage over how Gramm-Rudman is impacting upon his railroad retirees and supports what the Chair is doing 100 percent. He is also a cosponsor of this legislation.

So, I do thank the gentleman for his participation.

Thank you very much.

Mr. SNYDER. Thank you, Mr. Chairman.

Mr. BERGE. Thank you.

Mr. FLORIO. We are now pleased to have our next witness, and again to welcome him to our committee, Mr. Richard Briggs, executive vice president of the American Association of Railroads.

Mr. Briggs. Welcome to our committee. Your statement will be made a part of the record in its entirety.

You may feel free to proceed as you see fit.

STATEMENT OF RICHARD E. BRIGGS, EXECUTIVE VICE PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, ACCOMPANIED BY RICHARD T. CONWAY, COUNSEL

Mr. BRIGGS. Thank you, Mr. Chairman. I have with me Richard Conway of Shea & Gardner, who serves as our legal counsel on numerous matters affecting the railroad retirement and Unemployment Systems.

The issues before us today are critically important to the railroad industry. We understand I think the intent of this bill, as well as we do the concepts behind Gramm-Rudman-Hollings.

Our reading of H.R. 4338 indicates that section 2 would exempt Tier II COLA's from sequestration. Section 3 would exempt wind-fall dual benefits from sequestration. Section 4 would exempt railroad unemployment and sickness benefits. Section 5 would exempt the expenses of the Railroad Retirement Board in administering both the unemployment and retirement systems. Section 6 would make those exemptions effective retroactively as well as prospectively.

This latter section would not only undo any sequestrations that are already occurring, but it would also prevent such actions in the future.

Unfortunately, our board of directors has not had a chance to review this recent legislation and develop an official position thereon. However, in order to be as helpful as possible to this subcommittee, let me give you my personal views on what I perceive to be the potential reactions of the industry to this legislation.

We obviously sympathize with the obvious objective of Gramm-Rudman, but we also sympathize with the objectives you have in your bill, to exempt the railroad retirement system and the railroad unemployment and sickness systems from sequestration. Those railroad systems, like the Social Security System, are not a cause of the deficit in any realistic sense.

They provide support to the aged, disabled, unemployed, and sick in the form of Federal benefits. That, with the one exception of the windfall dual benefits, are financed through payroll taxes dedicated to that purpose. We can see no reason for trying to sequester those funds.

Moreover, the Gramm-Rudman expressly exempts from sequestration basic unemployment benefits as far as I can determine in every other industry. No other basic unemployment benefit in any other industry is impacted by Gramm-Rudman. On the other hand, unemployment in the railroad industry, by the quirk of our individual nature, is to be reduced despite the fact that railroad unemployment and sickness benefits are fairly low compared to the benefits in most State systems.

With respect to the impingement upon the administration of the Railroad Retirement Board, the railroads have long maintained the position that the Board was inadequately staffed and that inadequacy in resources in the long run has led to higher costs. We can see no reason why sequestration should be used to make that situation even worse.

For the most part, therefore, railroads would probably support the enactment of H.R. 4338. However, we are concerned about the enactment of section 2 which would exempt the tier II COLA's. Our reservations in that regard are not based on a belief that tier II COLA's are a cause of the deficit. Such increases in tier II benefits are financed by revenue from tier II taxes on both employers and employees.

So, it is our view that it would have been entirely proper to have excluded such COLA increases from sequestration under Gramm-Rudman. But, the tier II COLA's were subject to sequestration. Section 2 of the bill would, therefore, have the effect of increasing the existing level of tier II benefits rather than merely preventing a reduction in that level.

As I shall explain, a serious question has recently arisen concerning the ability of the railroad retirement system to pay additional tier II benefit costs in the future. Therefore, we believe this section of the legislation merits further consideration before it is supported.

Let me speak briefly about the problem that has arisen or appears to have arisen with respect to railroad retirement and future funding. We understand that the chief actuary's latest memorandum or report contains his projections for the future. He does this annually. This time, in making his projections out into the 21st century, he tried to take account of the recent drop in railroad employment that occurred in 1985 and early on in 1986. Factoring in that a lower base, and using more strenuous assumptions as to future declines in unemployment, he found that the system would have difficulty as we turn into the 21st century, somewhere between the years 2002 and 2007, depending on which of his assumptions, if any, prove to be correct.

He, therefore, suggested to the Board that they ought to consider whether there should be tax increases and suggested that an increase in the neighborhood of one-half percent in taxes, or a combination of taxes and reduced benefits that would be equivalent to one-half percent, should be implemented on top of an already high

burden, and that a contingency of a like amount, one-half percent, may be needed in another 2 years.

Obviously, if these figures hold up—we hope they will not—labor and management will have to sit down and try and figure out how to cope with this problem in the future. In view of the potential need that the taxes will have to be increased or benefits reduced, or a combination thereof, we think it would be premature at this time to go ahead and increase, put the COLA back, and then have to turn around at some future date within the foreseeable future and bring it back down.

That is a matter which I am sure this committee will look into at great length, and it may be that as we find that actuaries, as precise as their numbers look, don't have any better crystal ball than the rest of us, and it may be that the numbers turn out to be more beneficial in that situation, and we wouldn't have a problem.

I thank you.

[The prepared statement of Mr. Briggs follows:]

STATEMENT OF RICHARD E. BRIGGS

I am the Executive Vice President of the Association of American Railroads. The Association represents almost all of the nation's Class 1 railroads in a wide variety of matters, including legislative matters, that concern the railroad industry. H.R. 4338 contains significant legislative provisions affecting the railroad retirement system or the railroad unemployment and sickness insurance system and is therefore important to the railroad industry. The intent of H.R. 4338 is to exclude both of those railroad systems from the operations of the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177), often referred to as the Gramm-Rudman Act or the Gramm-Rudman-Hollings Act. That would be done retroactively to the December 12, 1985, enactment date of P.L. 99-177, as well as prospectively.

As I understand P.L. 99-177, tier 1 railroad retirement benefits as well as social security benefits, including all cost-of-living adjustments ("COLAs") in the basic amount of those benefits, are wholly exempt from sequestration by S 255(a); the basic amounts of tier 2 railroad retirement benefits also are wholly exempt from sequestration, but COLA increases are subject to 100% sequestration (which already has occurred in regard to the increase that otherwise would have become effective on January 1, 1986), under SS 251(a)(3)(C), 255(f) and 257(1); neither windfall dual benefits nor any railroad unemployment and sickness benefits have been exempted from sequestration, so that outlays are subject to a percentage sequestration (4.3% for FY 1986) under S 251(a)(B); and outlays for the expenses of the Railroad Retirement Board in administering both the railroad retirement system and the railroad unemployment and sickness insurance system are subject to a percentage sequestration (4.3% for FY 1986) under SS 251(a)(B) and 256(b).

Our reading of H.R. 4338 indicates that Sec. 2 would exempt Tier 2 COLAs from sequestration; Sec. 3 would exempt windfall dual benefits from sequestration; Sec. 4 would exempt railroad unemployment and sickness benefits from sequestration; Sec. 5 would exempt the expenses of the Railroad Retirement Board in administering the two railroad systems from sequestration; and Sec. 6 would make those exemptions from sequestration under P.L. 99-177 effective retroactively to the December 12, 1985, enactment date of P.L. 99-177, as well as prospectively. The latter section would not only undo any sequestrations that already have occurred but would also prevent future sequestrations in regard to all aspects of the railroad retirement and railroad unemployment and sickness insurance systems that now may be affected by sequestrations under P.L. 99-177.

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The AAR's Board of Directors has not had a chance to review this recently introduced legislation and develop official positions thereon. In order to be as helpful as possible to the Subcommittee, let me give you my views on what I perceive to be the potential reactions of the industry to this legislation.

The railroads sympathize with the general objective of P.L. 99-177 to reduce and eventually eliminate the federal budget deficit. The railroads also will sympathize, however, with the general objective of H.R. 4338 to exempt the railroad retirement system and the railroad unemployment and sickness insurance system from sequestrations under P.L. 99-177. Those railroad systems -- like the social security system -- are not a cause of the deficit in any realistic sense. They provide support to the aged, disabled, unemployed and sick in the form of federal benefits that -- with the one exception involving windfall dual benefits -- are financed through payroll taxes dedicated to that purpose. The mere fact that those self-supporting and self-contained railroad systems are included in the federal budget should not subject them to generalized or across-the-board reductions such as have been or may be required under P.L. 99-177.

Moreover, S 256(h) of P.L. 99-177 expressly exempts from sequestration basic unemployment benefits payable in regard to all other industries under the hybrid federal/state unemployment compensation system. On the other hand, unemployment in the railroad industry is to be reduced despite the fact that railroad unemployment and sickness benefits already are relatively low (a maximum of \$25 a day, or \$125 a week) as compared to the benefits that would be payable by most of the state unemployment compensation systems.

Furthermore, the railroads have long been concerned that the Railroad Retirement Board has sufficient staff and facilities to investigate claims in a manner adequate to make informed determinations as to their validity, as well as to pay valid claims with reasonable promptness. Such administrative expenses normally are cost effective in that the savings from the avoidance of erroneous benefit payments substantially exceed the administrative costs incurred. Even without the reductions that may be necessary to comply with P.L. 99-177, the manpower and facilities of the Board appear to us to be inadequate for that purpose.

For the most part, therefore, railroads would probably support enactment of H.R. 4338. However, we are concerned about enactment of Sec. 2 of that bill which would exempt tier 2 COLAs from sequestration. Our reservations in that regard are not based on a belief that tier 2 COLAs are a cause of the budget deficit. Such increases in tier 2 benefits are financed by revenues from tier 2 taxes, as is true of tier 2 benefits in

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general, so that in our view it would have been entirely proper to have excluded such COLA increases from sequestration when P.L. 99-177 was enacted just as basic tier 2 benefit amounts and tier 1 benefit amounts (including COLAs) were excluded. But tier 2 COLAs were subjected to sequestration under P.L. 99-177 as enacted and the January 1, 1986, increase already has been sequestered. Section 2 of the bill, therefore, would have the effect of increasing the existing level of tier 2 benefits rather than merely preventing a reduction in that level. As I shall explain, a serious question has recently arisen concerning the ability of the railroad retirement system to pay additional tier 2 benefit costs in the future. Therefore, this section of the legislation merits further consideration before it is supported.

Section 502 of the Railroad Retirement Solvency Act of 1983 (P.L. 98-76) requires the Railroad Retirement Board, by July 1 of 1985 and of each subsequent calendar year, to report to the Congress "on the actuarial status of the railroad retirement system," including "any recommendations for financing changes that might be advisable . . .". In its 1985 Report, the Board (with the concurrence of its Chief Actuary) concluded that the system was in sound financial condition and, indeed, also concluded, in the words of S 502, that there were "sufficient reserves" to permit a part of tier 2 tax revenues to "be diverted to the Railroad Unemployment Insurance Account to aid in the repayment of its debt to the Railroad Retirement Account." We have been informed, however, that the Chief Actuary has just submitted to the Board a report suggesting that the Board, in its 1986 Report to the Congress, should recommend an increase in the tier 2 tax rates, or their equivalent in terms of benefit reductions, or a combination of the two, of 1.5% on January 1, 1987, with the contingent possibility of a further 1.5% on January 1, 1988.

This unexpected development is apparently based on the actuary's latest projections from an unexpectedly steep decline in railroad employment during 1985. I am hopeful that, upon further consideration, the conclusions thus reached by the Chief Actuary will appear to be unduly pessimistic and the Board will conclude that such recommendations to the Congress are not justified. However, railroad management and labor also should commence consideration of what they should recommend to the Congress in the event that the Board should conclude that the recommendations now suggested by the Chief Actuary should be adopted, including negotiations for the purpose of arriving at joint recommendations. Whether or not such recommendations eventually should include elimination or reduction of tier 2 COLAs, the enactment at this time of legislation exempting such COLAs from sequestration would only exacerbate the situation and make more difficult the task of arriving at an acceptable solution in the event that the Chief Actuary's concerns appear to be fully justified.

I appreciate the opportunity to appear before the Subcommittee and to submit this Statement.

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Mr. FLORIO. Thank you very much. On the point that you developed toward the end of your remarks, what you are saying, as I understand it, is that new reports differ from previous analyses with regard to the viability of the trust fund pay out over a period of time.

What had been the previous assumptions with regard to the solvency of the fund, to what point, and under what circumstances?

Mr. BRIGGS. Let me try and dig back into my memory with a caveat. I can't cite all of the things with great precision, but if I remember correctly, in 1985 they took what they thought was the existing employment base at that time and then they ran three projections of future employment.

The first scenario assumed that employment would drop at the rate of 2 percent per year. The second one assumed that it would drop at the rate of 3 percent per year. The third one—the worst case scenario—was 4 percent per year. Under these scenarios—and there are a whole lot of other assumptions that go into the model, but under these basic assumptions, at the 2-percent decline, the best case, there were no problems anywhere out into the future. You started to run into problems in the middle and worst cases, approximately 2014 and 2005 I think.

So, we have moved up the problem date considerably. But the reason, Mr. Chairman, that it has been moved up, the principal reason, is that the actuary changed the assumptions. Instead of having minus 2, minus 3, minus 4, we now have minus 3½ minus 4 and minus 4½ percent annual reductions in employment.

So obviously if you assume there is going to be a sharper decline in future employment, the revenues taken in by the fund which come from the level of existing employees and employer payments drops.

Mr. FLORIO. How long ago was all of this analysis done?

Mr. BRIGGS. In the last 2 months. And I have great sympathy with whomever has to be the actuary at the Railroad Retirement Board. It must be the worst post in government.

The difficulty of looking ahead 30 or 40 years with precision is enormous. In the 1985 actuarial report, which seemed to run the numbers into eternity, the difference in the last 20 years of one-half of a percent assumption on employment generated problems in the magnitude of something like \$25 billion. So, it is a difficult assumption to have to make.

I'm sure that the Board will take a look at those assumptions and use their judgment as to whether or not they are correct. Because if the assumptions change, if you went back and used last year's rates of decline, the outcome of the report would not be materially different than it was a year ago. Now, it is true they would start with a lower employment base, that's reality. But that is not the driving factor, as I interpret the report. It's the assumption rates that they have used.

Mr. FLORIO. Well, your sensitivity of the need to preserve the integrity of the fund and the solvency of the fund is commendable. My recollection is that just a few months ago though, the railroads were asking for \$500 million out of the fund to transfer to deal with the unemployment system solvency. Isn't that going to make

a substantial difference in the ability to pay out under existing scenarios, much less hypothetical scenarios?

Mr. BRIGGS. The concept of diversion or interest-forgiveness, which was part of the labor/management package for revising RUIA, was not passed, as you know. It is my understanding that the requirement that the Board issue an annual recommendation on whether or not that diversion might be done will probably be covered in the next Board's report. Last year, based on the actuary's figures, they said it could be done.

We don't want to speculate what they will do this year, but if they stay with the latest assumptions, it would seem to me less than likely they would support that. So, that diversion will probably become a moot issue.

But let me put the \$500 million in perspective. It's equivalent to, if I remember correctly, about one-sixth of one-half percent increase in taxes, a relatively small number.

Mr. FLORIO. How does that factor into your new assumptions on unemployment? I mean, is that number the difference between your calculations of 3 percent, I think you have 3½ percent upside, and now you are saying maybe it's going to be 4½ percent. What does that \$500 million stretched out over the anticipated life of a viable fund, how does that translate into recomputation on your employment assumptions?

Mr. BRIGGS. It wouldn't change the employment assumptions. They are not mine. I mean, I'm just—

Mr. FLORIO. No, no. Let me clarify my question.

Mr. BRIGGS. OK.

Mr. FLORIO. How does it reflect? If, in fact, the old assumptions were valid and now you are going to divert \$500 million, or someone is going to divert \$500 million, from the fund, what would that be the equivalent of in terms of changed employment numbers that would not jeopardize the fund, as you have expressed your interest in not jeopardizing the fund, to the degree that you are willing to give away the COLA's, or at least you are not totally supportive of our effort to preserve the COLA's?

Mr. BRIGGS. If my memory is correct—and I will submit a statement for the record after I review it—it seems to me that the \$500 million is the equivalent to a rate increase of about three-tenths of 1 percent annually.

Mr. FLORIO. So, it's a relatively small—

Mr. BRIGGS. It's a very small number compared to the magnitude of the other problems that we are dealing with. But the problem is trying to first confront the figures and review them and seeing what, in fact, is the best judgment to make for the future. And if those problems can be resolved, we don't have any problem with the tier II.

Mr. FLORIO. It is represented to me that the tier II COLA represents \$18 million. So, I mean, in terms of the \$500 million that was enthusiastically asked to be shifted, we are not really talking about a whole lot of money relative to the whole system by giving—I suspect. Mr. Briggs, my concern is, I'm just a little bit disconcerted to hear your—again, you have indicated this was your personal view as opposed to the association's view—early on willingness to subscribe to Gramm-Rudman's desire to knock out COLA's when the

basic arguments that we have talked about, I think makes sense, that it's not a deficit reduction initiative, and the more fundamental question that you raise now is that maybe under some new assumptions the integrity of the fund will be changed over a long period of time.

I would hope that we could have the industry's support for preserving what seems to make an awful lot of sense, and which everyone has agreed to prior to that, until someone gets some definitive information that the absence of the preservation of these numbers will somehow jeopardize the fund in the year 2007.

I would just hope that when the association gets around to making its formal statement on this issue, which hopefully will be before too long, they would not be speculatively anticipating things so as to provide justification or support to those who want to break the agreement that has been forged by all the parties in this area.

Mr. BRIGGS. The problem, Mr. Chairman, and I think it is a narrow one, is not that we support sequestration in any form. We are opposed to that. We agree in principal throughout as it relates to all of these items.

The problem is that we now have sitting in the wings a potential request that says management and labor have got to sit down and try to figure out how to come up with more money. Now, maybe that will prove not to be the case. To take a look at the benefits and see how you put together a package that perhaps is higher employer taxes and employee taxes and maybe some reduction in benefits, and that it would be premature to go and raise the benefits now by a special act and then turn around and have to drop them at a later point. That's the point that we are trying to make.

Mr. FLORIO. I just observe the obvious, that management's contribution to these funds is not a gratuitous, humanitarian effort. It is part of the negotiating process.

I think labor people might be predisposed to say: Well, that's fine. Let's argue on the wage side, then, rather than to be willing to take as part of the overall package lesser wages in return for contributions to funds that are not going to be able to be used for the members' benefit.

I know that that's certainly not in the interest of the industry to be changing the negotiation patterns so as to forget about fringes and put everything up front on the table on wages. I just, in a sense, caution that that would seem to be the self-interest analysis that somebody on the labor side has got to come to when we start changing the impact of fringes as part of the overall negotiating package.

Is that an unreasonable analysis?

Mr. BRIGGS. I don't think that's unreasonable, sir. And it's my personal opinion that the figures that have been developed by the actuary too negative, that the problem may have changed only modestly from where it was. Any kind of actuarial analysis done two years in a row is going to produce a different result. Nothing stands still. That problem will not require an additional set of taxes.

Mr. FLORIO. I suppose the only other observation I would make is that hopefully the unfortunate projections about unemployment, increased unemployment, are not the case, because if they are the

case someone has got to start looking at how expanded prosperity of the railroad industry, particularly as a result of congressional action over the last number of years, is contributing to expanded unemployment.

If that's the case, then someone has got to go back and relook through the basic assumptions that were followed when we took legislative action around here, because certainly part of the initiative was to have a healthier railroad industry, a better shipping climate, a better railroad system, and better fairness for employment opportunities for people in the industry.

Now, if parts of the whole network of considerations or the whole package of considerations are starting to fall apart; that is, they are not being realized, then someone has got to go back and question all of the assumptions that we had with regard to the legislative changes.

So that one is going to—

Certainly you are going to look at it. I'm sure the labor people are going to look at it. But more importantly perhaps, the Congress is going to be looking at What it is that we did that may have not delivered the hope in the way that all of us hoped for, that the industry would do well, the shipping public would do well, the labor people would do well, and the overall economy would do well.

I'm hopeful that when we get those numbers they will not indicate that somehow trends, perhaps accelerated by legislative action, have contributed to a lessening employment situation.

Mr. BRIGGS. Let me try and clarify something. When I talked about employment trends, I was talking about the level of employment, not the level of unemployment, not a lot of people who had jobs being out of jobs.

The unemployment trend has improved materially since the recession. But as to the prospective overall level of employment in the railroad industry, I think one thing that the Congress will have to understand is that the economy is floundering in terms of some of the basic industries which support the railroads.

It's not our service; our service is better. It's not our rates; they are more realistic in a relative way than they were before.

But we sit here, and I look back 6 years, and we have only 42 percent of the steel business we had. The answer to that is that steel production is down. No one else has that traffic. It's not there.

We have 48 percent of the business, because the business is down. Those are two of our major commodities.

We've lost 40 percent of the grain business, because we can't export grain at the current level of the U.S. dollar. Now, not all of the portions of our business are that bad, the fact is that there has been a substantial reduction in basic industries in the United States.

Now, we handle some imports but there is nowhere near as much transportation in handling imports as there is in handling things for domestic production, because you have the raw materials and usually several trips by the time it reaches the end user.

That is a problem in every form of transportation that they are going to have to face as we come up. Only to the extent that those basic industries are resuscitated do we have I think a real hope of talking about greater employment in the transportation industry.

We recently sat down and were talking with people from the American Trucking Association and their perspective is no different than ours. We have had 6 years with negative growth in freight transportation in this country.

Mr. FLORIO. Let me ask finally, just to get the benefit of your acknowledged expertise, to give an opportunity to you to respond and to explain very briefly the question we asked—I saw you shaking your head—when we were getting some discussions about dual benefits.

Why don't you give us your analysis of the impact of the dual benefit modification in 1974 and its relationship to the subject that we are talking about here today?

Mr. BRIGGS. Well, at that time you had a dual benefit. It represented the difference between what people would have got if they worked all of that time under one system and what they got as a total from working under two systems.

Working under two systems generally produces higher combined amounts, because those systems tend to be weighted to low years of service and lower earnings. So, if you worked 20 in each of two systems you ended up with more benefits than someone who has worked 40 in either system, Social Security or railroad retirement. They limited that differential at that time so that it wouldn't grow.

They also limited it as to who could get it. They allowed only people who had vested at that time to "go ahead and receive it" and it was subsequently the subject of various other restrictions. It has been going back and forth, battled or and shuttlecock, with OMB ever since.

But finally we have a system where those payments, which are not increased, were supposed to be funded. Now, they are suggesting that they apply Gramm-Rudman to it.

There is no limit to the ingenuity with ways that people can come up and try and undo what this committee and the Congress has done on windfall benefits. It's a new tactic every year.

Mr. FLORIO. So, my analysis is not incorrect that a railroad retiree, a railroad worker, at that time who was entitled to both systems effectively took some pain when the Congress made the change then—that someone would have gotten probably more under the two systems if they were qualified than they would under dual benefit.

Now at this point, what we are talking about again is reductions off of dual benefits so there is two pain threshold points rather than just the one.

Mr. BRIGGS. There have been restrictions. The biggest restrictions were the people who are not allowed to get dual benefits in the first place.

Mr. FLORIO. Dual benefits, no COLA either.

Mr. CONWAY. May I speak to that?

Mr. FLORIO. Certainly.

Mr. CONWAY. What happened, Mr. Chairman, was that for the future, starting in 1975, the two systems in effect were combined so the amount was computed together. Anyone who had not already qualified gets no windfall excess amount at all.

So that was cut off at the beginning January 1, 1975, for people who had not already qualified in terms of having sufficient social

security service and sufficient railroad retirement service to, if they had retired right then, would have gotten this excess benefit.

Now, with respect to those people there was a restriction also. The amount was frozen basically. So, if they had continued working, it would have continued to increase and the excess would have got greater. You froze the amount as of January 1, 1975, so there are some restrictions in that regard.

But when we talk about your funding, what you are paying out of the appropriations for the general fund, is this frozen amount that was preserved for the people who are qualified as of January 1, 1975.

Mr. FLORIO. That's very helpful. I appreciate that. Maybe after the hearing is over I might ask Mr. Mahoney, who has obviously great legal skill, as to whether anybody on the labor side is considering, or considered, going to court to put into question OMB's interpretation of their authority in terms of the initial sequestration, on dual benefits, since it seems to be a fairly tenuous relationship that they are interpreting the law to effect dual benefits.

Have you any thoughts on that, Mr. Briggs?

Mr. BRIGGS. It strikes me that probably the most tenuous of the assumptions we are discussing deals with the unemployment system.

A suit would be difficult on dual benefits, as I understand it, because Gramm-Rudman also cut out COLA's with certain other types of pensions, including government pensions.

Mr. FLORIO. Well, in the Government pensions, the Government is the contributor.

Mr. BRIGGS. Oh, I agree. I agree. But, what I'm saying is they specifically directed themselves to that.

Mr. FLORIO. I see.

Mr. BRIGGS. My guess is that unless something dramatic happens with the unemployment system, that even if they tried to sequester it, it would have no practical effects on benefits.

It's a terrible precedent, and it's horribly unfair to single out only one unemployment system for this treatment. But there are sufficient funds now I think so that the Board could continue to pay full benefits.

Now, if they took two or three consecutive Gramm-Rudman cuts, that might not necessarily be true.

Mr. FLORIO. Mr. Briggs, let me thank you very much for your participation again. I appreciate your cooperation today.

Thank you. If there is no further business to come before the committee, the committee stands adjourned.

[Whereupon, at 10:30 a.m., the hearing was adjourned.]

[The following letter was submitted for the record:]

PATRICK MENDILLO
NATIONAL PRESIDENT
NARVRE
1815 COLDEN AVENUE
BRONX, NEW YORK 10462

April 28, 1986

Honorable Congressman James J. Florio
Chairman
Subcommittee on Commerce Transportation and Tourism

Dear Congressman Florio:

My name is Patrick Mendillo, National President of the National Association of Retired and Veteran Railway Employees, Inc. My office is in New York City. I would like to submit to you the following statement for inclusion in the record hearing held May 1, 1986 by the Subcommittee on Commerce Transportation and Tourism on HR.4338 the Railroad retirement and Unemployment Benefits protection Act of 1986.

I most appreciate the opportunity to say a few words on behalf of many thousands of retired railway workers who are members of 170 Units of NARVRE consisting of 60 thousand members throughout the United States. Railroad retirees have sacrificed greatly in recent years to keep their retirement system solvent. The system is now healthy and capable of paying full benefits. Yet, in the name of Gramm-Rudman, railroad retirees are being asked to sacrifice yet again and give up additional earned benefits.

The Gramm-Rudman law also eliminated the January COLA's Tier II benefits, this COLA elimination does not make any sense, since the railroad retirement benefits are paid from a self-contained trust fund which is currently financially healthy.

In addition, many railroad retirees receive a third component, the dual benefit component. Retirees may be receiving this component if they have worked both inside and outside the railroad industry. The Gramm-Rudman amendment requires that these benefits be subject to cutback. As a result of Gramm-Rudman, the dual benefit component was cut by about 7.7 percent as of April 1, 1986.

Gramm-Rudman may also result in reduction of railroad unemployment insurance benefits. Unemployed railroad workers already receive among the lowest unemployment benefits at \$125 a week. Any reduction in that amount is unfair to unemployed rail workers particularly when basic state unemployment insurance benefits are exempt from Gramm-Rudman.

Finally, the administrative expenses of the Railroad Retirement Board will be reduced 4.3 percent by Gramm-Rudman. Since these expenses are paid out of retirement and unemployment insurance funds and not from general revenue, they should not be reduced. These Gramm-Rudman reductions will only result in poorer service to retirees and unemployed rail workers.

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PATRICK MENDILLO
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Honorable Congressman James J. Florio
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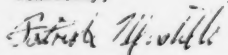
April 28, 1986

Starting October 1, 1986, the cutbacks required by Gramm-Rudman could be even more severe. The Tier ~~III~~ COLA would again be eliminated and cut in dual benefits and railroad unemployment insurance benefits could be even larger.

This legislation would restore the Tier ~~III~~ COLA that was taken away in January, ensure that all future COLA's be paid, and would prevent reduction in dual benefits, railroad unemployment insurance benefits, and administrative expenses available to the board.

As president of NARVRE, I wish to express support for the enactment of Congressman Florio's bill, and thank you for this opportunity to express these views on a subject which is vitally critical to the welfare of our members and railroad retirees

Sincerely,



Patrick Mendillo
National President

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BEFORE THE
SUBCOMMITTEE ON COMMERCE,
TRANSPORTATION AND TOURISM
OF THE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT OF

JOHN F. SYTSMA, PRESIDENT
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

ON H.R. 4336

MAY 1, 1986

On behalf of the members of the Brotherhood of Locomotive Engineers, I wish to express my strong support of H.R. 4338, the "Railroad Retirement and Unemployment Benefits Act of 1986".

Mr. Chairman, railway employees are the victims of an unjust attack on their retirement and unemployment protection systems. Because our self-supporting and self-contained railroad retirement systems are included in the federal budget, we are subjected to the generalized and ~~across-the-board~~ reductions found in the Gramm-Rudman-Hollings Act.

Railway employees face severe cuts in Railroad Retirement benefits, 7.7% reductions in dual benefit payments and have already experienced the elimination of our Tier II Cost-of-Living Adjustments. In addition, unemployed railroad workers will see decreases in their already low unemployment benefits checks and administrative expenses of the Railroad Retirement Board will be reduced by 4.3%. Gramm-Rudman imposes upon the railroad systems by trimming the already lean benefits accrued to rail workers and by providing poorer service to both the retired and the unemployed.

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In 1983, we saved the Railroad Retirement Program which was then in deep financial trouble. We sacrificed benefits for the good of the overall system and it worked. Under the 1983 Solvency Act, we now pay 4.25% over the standard Social Security rate and agreed to dramatic benefit reductions, COLA offsets and taxation of our Tier II benefits. We have given a lot to the federal government, must we give up more for the sake of Gramm-Rudman?

It is unfair to punish, once again, rail employees who give in order to protect their futures. Mr. Chairman, our special fund cannot be used for any other purpose than to provide for the retired and unemployed. The responsibility of offsetting budget deficits that have nothing to do with us has been pushed on our shoulders. We cannot be Gramm-Rudman's beast of burden.

H.R. 4338 will protect the railroad system from the effects of the proposed budget cuts, in addition to restoring benefits that have been unjustly taken away.

Mr. Chairman, we salute you for taking the initiative on this legislation and hope that this Committee will give serious consideration to the "Railroad Retirement and Unemployment Benefits Act of 1986". The Brotherhood of Locomotive Engineers is grateful for your many efforts and continued support. We look forward to working with you.

Thank you.